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THE INDIAN PENAL CODE.

THE INDIAN PENAL CODE

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EXPLANATIONS OF ABBREVIATIONS

A. C.	..	Appeal Cases, Law Reports, from 1891—
A. E. R.	..	All England Reports, from 1936—
A. L. J. R.	..	Allahabad Law Journal, from 1904—
A. W. N.	..	Allahabad Weekly Notes, 1881-1908.
Agra	..	Agra High Court Reports, 1866-1868.
All.	..	Indian Law Reports, Allahabad Series, from 1876—
App. Cas.	..	Law Reports, Appeal Cases, 1875-90.
Archbold	..	Archbold's Criminal Pleadings, Evidence and Practice, 30th edn.
B. & A.	..	Barnwell and Alderson, 1817-1822, K. B.
Beng. L. R.	..	Bengal Law Reports, 1868-1875.
Bom.	..	Indian Law Reports, Bombay Series, from 1876—
B. H. C.	..	Bombay High Court Reports, 1862-1875.
Bom. L. R.	..	Bombay Law Reporter, from 1899—
B. & S.	..	Best and Smith, 1861-1869, Q. B.
Burma L. R.	..	Burma Law Reports, 1895-1908.
Cal.	..	Indian Law Reports, Calcutta Series, from 1876—
C. L. R.	..	Calcutta Law Reports, 1878-1883.
C. L. J.	..	Calcutta Law Journal, from 1905—
C. W. N.	..	Calcutta Weekly Notes, from 1896—
C. & K.	..	Carrington and Kirwan, 1843-1850, N. P.
C. & M.	..	Carrington and Marshman, 1840-1842, N. P.
C. & P.	..	Carrington and Payne, 1823-1841, N. P.
Ch.	..	Law Reports, Chancery Division, from 1881—
Ch. D.	..	Chancery Division, Law Reports, 1875-1890.
Coke	..	Coke's Reports, 1752-1816.
Cox	..	Cox's Criminal Cases, from 1843—
Cr. R.	..	Criminal Rulings of the Bombay High Court, from 1861-1910
D. & B.	..	Dearsley and Bell, 1850-1858, C. C.
Dears	..	Dearsley's Crown Cases, 1852-1856.
Den. C. C.	..	Denison's Crown Cases, 1841.
East	..	East's Reports, 1801-1812, K. B.
East P. C.	..	East's Pleas of the Crown.
E. & B.	..	Ellis and Blackburn, 1851-1858, Q. B.
E. & E.	..	Ellis & Ellis, 1858-1861, K. B.
Exch.	..	Exchequer Division, Law Reports, 1875-1890.
F. & F.	..	Foster and Finlayson, 1858-1867, N. P.
Foster	..	Foster's Crown Law.
First Report	..	First Report of the Law Commissioners.
H. L. C.	..	Law Reports, House of Lords.
Hale's P. C.	..	Hale's Pleas of the Crown.
Hawk. P. C.	..	Hawkin's Pleas of the Crown.
I. A.	..	Indian Appeals, from 1886—
Ind. Jur. N. S.	..	Indian Jurist, New Series, 1866-1867, Calcutta.
..	..	O. S. .. Indian Jurist, Old Series, 1862, Calcutta.

Kar.	..	..	Indian Law Reports, Karachi Series, from 1940—
L. B. R.	..	..	Lower Burma Rulings, 1901-1922.
L. J. C. P.	..	..	Law Journal, Common Pleas, from 1822—
„ Ch.	..	..	Chancery.
„ Ex.	..	..	Exchequer.
„ M. C.	..	..	Magistrates Cases.
„ P.M. & A.	..	..	Probate, Matrimonial and Admiralty.
„ Q. B.	..	..	Queen's Bench.
L. R. App. Cas.	..	..	Law Reports, Appeal Cases, 1875-1890.
„ C. P.	..	..	Common Pleas, 1866-1875.
„ C.C.R.	..	..	Crown Cases Reserved.
„ Ch.	..	..	Chancery Division, from 1891—
„ Ex.	..	..	Exchequer.
„ Ex. D.	..	..	Exchequer Division, 1875-1890.
„ H. L.	..	..	House of Lords.
„ I. A.	..	..	Indian Appeals.
„ K. B.	..	..	King's Bench Division, from 1901—
„ Q. B.	..	..	Queen's Bench.
„ Q. B. D.	..	..	„ „ Division, 1875-1890.
L. & C.	..	..	Leigh and Cave's Crown Cases.
L. T.	..	..	Law Times, 1845-1858.
L. T. N. S.	..	..	Law Times, New Series, from 1859—
L. W.	..	..	Law Weekly, Madras, from 1914—
Lah.	..	..	Indian Law Reports, Lahore Series, from 1920—
Leach C. C.	..	..	Leach's Crown Cases, 1730-1738.
Lewin	..	..	Lewin's Crown Cases, 1882-83.
Luck.	..	..	Indian Law Reports, Lucknow Series, from 1926—
Mad.	..	..	Indian Law Reports, Madras Series, from 1876—
M. H. C.	..	..	Madras High Court Reports, 1862-1875.
M. L. J.	..	..	Madras Law Journal Reports, from 1891—
M. L. T.	..	..	Madras Law Times.
M. W. N.	..	..	Madras Weekly Reports, from 1910—
Mayne	..	..	Mayne's Criminal Law of India, 1905.
M & M.	..	..	Morgan and Macpherson's Indian Penal Code.
Moody Cr. C.	..	..	Moody's Crown Cases Reserved, 1824-1844.
M. I. A.	..	..	Moore's Indian Appeals, 1836-1873. P. C.
Nag.	..	..	Indian Law Reports, Nagpur Series, from 1936—
N. I. J.	..	..	Nagpur Law Journal, from 1918—
N. W. P.	..	..	N. W. P. High Court Reports, 1862-1875.
Note	..	..	Note appended to the Draft Penal Code, 1836.
P. I. J.	..	..	Patna Law Journal, 1916-1921.
P. L. R.	..	..	Punjab Law Reporter, from 1900—
P. C.	..	..	Privy Council.
P. D.	..	..	Law Reports, Probate Division, 1875-1890.
P. R.	..	..	Punjab Record, 1862-1919.
P. W. R.	..	..	Punjab Weekly Reporter.
Parl. Rep.	..	..	Parliamentary Reports.
Pat.	..	..	Indian Law Reports, Patna Series, from 1922—
Q. B.	..	..	Queen's Bench, Law Reports, from 1891—
Q. B. D.	..	..	Law Reports, Queen's Bench Division, 1875-90.

Ran.	..	..	Indian Law Reports, Rangoon Series, 1923-1937 (March).
Ran.	..	..	Rangoon Law Reports, from April, 1937—
Russell	..	..	Russell on Crimes and Misdemeanours.
Russ & Ry.	..	..	Russell and Ryan's Crown Cases Reserved.
S. L. R.	..	..	Sind Law Reporter, from 1907—
Salk.	..	..	Salkeld's Reports, 1669-1712.
Second Report			Second Report of the Law Commissioners
Stephen	..	..	Stephen's History of the Criminal Law of England.
Stephen's Dig.			Stephen's Digest of Criminal Law.
St. Tr.	..	..	State Trials.
T. R.	..	..	Dunford and East's Term Reports, 1885-1800, K. B.
Unrep. Cr. C.	..	..	Unreported Criminal Cases of the High Court of Bombay 1862-1869.
Weir	..	..	Weir's Law of Offences and Criminal Law.
Wharton	Wharton's Law Lexicon, 14th Edn.
W R.	Weekly Reporter, 1862-1875, Calcutta.

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THE INDIAN PENAL CODE

(ACT XLV OF 1860).

[*Received the assent of the Governor-General
on October 6, 1860.*]

CHAPTER I.

INTRODUCTION.

WHEREAS it is expedient to provide a general Penal Code for British
Preamble. India; it is enacted as follows :—

Title and extent
of operation of the
Code.

1. This Act shall be called the Indian Penal Code,
and shall take effect throughout British India.

COMMENT.—The Indian Penal Code was drafted by the first Indian Law Commission of which Mr. (afterwards Lord) Macaulay was the President, and was submitted to the Governor-General of India in Council in 1837; but it was not until 1860 that it took its place on the Indian Statute Book.

Before 1860, the English criminal law, as modified by several Acts,¹ was administered in the Presidency-towns of Bombay, Calcutta and Madras. But in the mofussil, the Courts were principally guided by the Mahomedan criminal law, the glaring defect of which were partly removed by Regulations of the local Governments. In 1827, the judicial system of Bombay was thoroughly revised and from that time the law which the criminal Courts administered was set forth in a Regulation² defining offences and specifying punishments. But in the Bengal and Madras Presidencies the Mahomedan criminal law was in force till the Indian Penal Code came into operation.

Offences committed prior to operation of Code.—Such offences are still punishable under the old Acts and Regulations.³

Extension.—The Code has been extended to several places by special legislation.

¹ 9 Geo. IV, c. 74; Acts VII and XIX of 1837; Act XXXI of 1838; Acts XXII and XXXI of 1839; Acts VII and X of 1844; Act XVI of 1852.

² XIV of 1827.

³ *Mutua*, (1878) 1 All. 599, contra, *Diljour Misser*, (1877) 2 Cal. 225, &c.

2. Every person¹ shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within British India².

Punishment of offences committed within British India.

COMMENT.—This section deals with the intra-territorial operation of the Code. It makes the Code universal in its application to every person in any part of British India for every act or omission contrary to the provisions of the Code. It prescribes no fixed time within which prosecution should be launched, as it follows the maxim *nulhum tempus occurrit regi*.

1. 'Every person.'—Every person is made liable to punishment, without distinction of nation, rank, caste or creed, provided the offence with which he is charged has been committed in some part of British India. A foreigner who enters the British territories and thus accepts the protection of British laws virtually gives an assurance of his fidelity and obedience to them and submits himself to their operation. It is no defence on behalf of a foreigner that he did not know he was doing wrong, the act not being an offence in his own country. Though this is no defence, yet it is a matter to be considered in mitigation of punishment.³ A person was indicted for an unnatural offence committed on board of an East India ship, lying in St. Katherine's Dock. It was argued that he was a native of Baghdad where his act would not have amounted to an offence, but it was held that that was not a legal defence.⁴

There are, however, certain high officers of the Crown who are not amenable to the provisions of the Code in view of statutory exemptions created in their favour. The Courts in British India are prohibited from issuing a process against the Governor-General, the Governor of a Province, or the Secretary of State.⁵ Similar immunity extends to the Chief Justices and Judges of the Indian High Courts.⁶ Offences committed by them shall be enquired of, heard, tried and determined, in the Court of King's Bench in London.⁷ The trial of such offences is regulated by a special procedure.⁸

There is no exception in favour of anyone in the Penal Code, but the following persons are always exempted from the jurisdiction of criminal Courts of every country :—

1. *Sovereign*.—The Sovereign can do no wrong, and is, therefore, not liable to punishment. Blackstone⁹ says : "No suit or action can be brought against the king, even in civil matters, because no court can have jurisdiction over him. For all jurisdiction implies superiority of power : authority to try would be vain and idle, without an authority to redress ; and the sentence of a Court would be contemptible, unless that Court had power to command the execution of it : but who, says Finch, shall command the king ? Hence it is likewise, that by law the person of the king is sacred, even though the measures pursued in his reign be completely tyrannical and arbitrary : for no jurisdiction upon earth has power to try him in a criminal way ; much less to condemn him to punishment. If any foreign juris-

¹ *Esop*, (1836) 7 C. & P. 436; *Jitendranath Ghosh v. The Chief Secretary to the Government of Bengal*, (1932) 60 Cal. 304.

² *Esop*, *sup.*

³ Government of India Act, 1935, 25 & 26 Geo. V, c. 42, s. 306.

⁴ 13 Geo. III, c. 68, ss. 17, 39.

⁵ 11 Will. IV, c. 12, s. 18; 18 Geo. III, c. 63, s. 39; 21 Geo. III, c. 70, ss. 4, 5.

⁶ 24 Geo. III, c. 25, ss. 645-8 and 26 Geo. III, c. 57, ss. 1-28.

⁷ Vol. I, (1829), p. 242.

diction had this power, as was formerly claimed by the Pope, the independence of the kingdom would be no more: and, if such a power were vested in any domestic tribunal, there would soon be an end of the constitution, by destroying the free agency of one of the constituent parts of the sovereign legislative power."

2. *Foreign Sovereigns*.—The world being composed of distinct sovereignties, possessing equal rights and equal independence whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction within their respective territories which sovereignty confers...One sovereign being in no respect amenable to another and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express licence, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him.¹ The real principle on which the exemption of every sovereign from the jurisdiction of every Court has been deduced is that the exercise of such jurisdiction would be incompatible with his regal dignity—that is to say, with his absolute independence of every superior authority.²

3. *Ambassadors*.—The immunity of an ambassador from the jurisdiction of the courts of the Country to which he is accredited is based upon his being the representative of the independent Sovereign or State which sends him, and which sends him upon the faith of his being admitted to be clothed with the same independence of and superiority to all adverse jurisdiction as the sovereign authority whom he represents would be.³ He does not owe even a temporary allegiance to the Sovereign to whom he is accredited, and he has at least as great privileges from suits as the Sovereign whom he represents. He is not supposed even to live within the territory of the Sovereign to whom he is accredited, and, if he has done nothing to forfeit or to waive his privilege, he is for all juridical purposes supposed still to be in his own country.⁴ If he grossly offends, or makes an ill use of his character, he may be sent home and accused before his master, who is bound either to do justice upon him, or avow himself the accomplice of his crimes. But there is a great dispute among the writers on the laws of nations, whether this exemption of ambassadors extends to all crimes, as well natural as positive; or whether it only extends to such as are *mala prohibita*, as coining, and not to those that are *mala in se*, as murder.⁵ A direct attempt against the life of the Sovereign, ambassador, or one of his suite, would directly be punishable by the State.⁶

4. *Alien enemies*.—In respect of acts of war alien enemies cannot be tried by criminal Courts. "Aliens, who in a hostile manner invade the kingdom, whether their king were at war or peace with ours, and whether they come by themselves or in company with English traitors, cannot be punished as traitors, but shall be dealt with by martial law."⁷ If an alien enemy commits a crime unconnected with war, e.g., theft, he would be triable by ordinary criminal Courts.

¹ Per Marshall, C. J., in *Schooner Exchange v. M'Faddon*, (1812) 7 Cranch 116, 136, 137.

² Per Brett, L. J., in *The Parlement Belge*, (1880) 5 P. D. 197, 207.

³ *Ibid.*

⁴ Per Lord Campbell, C. J., in *Magdalena Steam Navigation Company v. Martin*, (1859) 2 E. & E. 94, 111.

⁵ Blackstone, Vol. 1, (1829), p. 253.

⁶ 2 Hale P. C., pp. 96-99.

⁷ 1 Hawk. P. C., c. 2, s. 6.

5. *Foreign army*.—When armies of one State are by consent on the soil of a foreign State they are exempted from the jurisdiction of the State on whose soil they are.

6. *War ships*.—Men-of-war of a State in foreign waters are exempt from the jurisdiction of the State within whose territorial jurisdiction they are. The domestic Courts, in accordance with principles of international law, will accord to the ship and its crew and its contents certain immunities. The immunities can, in any case, be waived by the nation to which the public ship belongs.¹

2. 'Within British India.'—If the offence is committed outside British India it is not punishable under the Penal Code, unless it has been made so by means of special provisions such as ss. 3, 4, 108A, etc., of the Code. A subject of an Indian State, who is guilty of retaining stolen property within that State, is not liable to be punished under the Penal Code.²

Territorial jurisdiction.—The general territorial jurisdiction of a State extends into the sea as far as a cannon-shot will reach, which is usually calculated to be a marine league, or three miles. The territories, strictly speaking, of a State include, therefore, not only the compass of land, in the ordinary acceptation of the term, belonging to such State, but also that portion of the sea lying along and washing its coast, which is commonly called its maritime territory. The laws of that State apply to acts committed within them. It is by the assent of nations that the three-mile belt of sea has been brought under the dominion of every State. In the *Fraconia* case the question arose whether the British Courts had jurisdiction over a foreigner in command of a foreign ship, who, whilst passing within three miles of English shores, ran into a British ship and caused loss of life. It was held that in the absence of statutory enactment the Central Criminal Court had no power to try such an offence.³ This decision led to the passing of the Territorial Waters Jurisdiction Act, which has been extended to India. Prior to the decision in the *Fraconia* case the Bombay High Court had held⁴ that an offence committed on the high seas but within three miles from the coast of British India, as being committed within the territorial limits of British India, was punishable under the provisions of the Penal Code. In this case certain of the inhabitants of a village sallied out in boats and pulled up and removed a number of fishing-stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village. It was held that the local criminal Court had jurisdiction over the offenders, that the Penal Code was the substantive law applicable to the case, and that the offence amounted to mischief.

By the Territorial Waters Jurisdiction Act, s. 2, an offence committed by a person, whether he is or is not a subject of His Majesty, on the open sea within the territorial waters of His Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board, or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly.⁵

"Offence," as used in this Act, means an act, neglect, or default of such a description as would, if committed within the body of a county in England, be punishable according to the law of England (s. 7).

The "jurisdiction of the admiral" includes the jurisdiction of the admiralty of England and Ireland, or either of such jurisdictions as used in any Act of Parlia-

¹ *Chung Chi Cheung*, [1939] A. C. 160.

⁴ *Kastya Rama*, (1871) 8 B. H. C. (Cr. C.) 63.

² *Gunna*, (1926) 48 All. 687.

⁵ 41 & 42 Vic., c. 73.

³ *Keyn*, (1876) L. R. 2 Ex. D. 63.

ment; and for the purpose of arresting any person, the territorial waters shall be deemed to be within the jurisdiction of any Judge, Magistrate, or Officer having power to issue warrants for arresting persons charged with offences committed within the jurisdiction of such Judge, Magistrate, or Officer (*ibid*).

"Territorial waters" means such part of the sea adjacent to the coast as is deemed by international law to be within the territorial sovereignty of His Majesty; and for the purpose of any offence under this Act, it means any part of the open sea within one marine league of the coast measured from low watermark (*ibid*).

Where the prisoner is not a subject of His Majesty, proceedings against him shall not be instituted in any of the dominions of His Majesty out of the United Kingdom, except with the leave and certificate of the Governor of that part (s. 3).

3. Any person liable, by any Indian Law, to be tried for an offence committed beyond British India shall be dealt with according to the provisions of this Code for any act committed beyond British India in the same manner as if such act had been committed within British India.

Punishment of offences committed beyond, but which by law may be tried within, British India.

COMMENT.—This section and section 4 relate to the extra-territorial operation of the Code. The words of this section postulate the existence of a law that an act constituting an offence in British India shall also be an offence when committed outside British India. Thus taking part in a marriage which is prohibited by the Child Restraint Marriage Act by a British Indian subject beyond British India is not an offence which can be punished in British India.¹ This section only applies to the case of a person who at the time of committing the offence charged was amenable to a British Court.² A Native Indian subject of His Majesty, being a soldier in the Indian army, committed a murder in Cyprus, while on service in such army, and was charged with this offence at Agra. It was held that he might be dealt with in respect of such offence by the criminal Courts at Agra.³

The operation of the section is restricted to the cases specified in the Indian Extradition Act and the Criminal Procedure Code, ss. 186 and 188.

Extension of Code to extra-territorial offences.

4. The provisions of this Code apply also to any offence committed by—

(1) any Native Indian subject of Her Majesty in any place without and beyond British India;

(2) any other British subject within the territories of any Native Prince or Chief in India;

(3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India;

(4) any person on any ship or aircraft registered in British India wherever it may be.

Explanation.—In this section the word "offence" includes every act

¹ *Sheikh Haidur v. Syed Issa*, [1939] Nag. 241.

² *Pirtai*, (1873) 10 B. H. C. 356.

³ *Sarmukh Singh*, (1879) 2 All. 218, F.B.

committed outside British India which, if committed in British India, would be punishable under this Code.

ILLUSTRATIONS.

(a) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) C, a foreigner, who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

COMMENT.—This section shows the extent to which the Code applies to offences committed outside British India.

Crimes committed outside British India.—Where an offence is committed beyond the limits of British India but the offender is found within its limits, then

(I) he may be given up for trial in the country where the offence was committed (*extradition*), or

(II) he may be tried in British India (*extra-territorial jurisdiction*).

(I) **Extradition.**—The scene of offence committed outside British India may be—

(1) Any of the Indian States in which the Governor-General or Governor has a power and jurisdiction through a Political Agent.

(2) Some foreign State.

(3) Some part of the King-Emperor's dominions.

(1) Where an extradition offence (i.e., any such offence as is described in the first schedule of the Indian Extradition Act, XV of 1903) has been committed by a person, not being a European British subject, in the territories of such State and such person escapes into or is in British India, and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be, for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.¹

(2) Where the scene of offence is some foreign State (i.e., a State to which for the time being, the Extradition Acts, 1870 and 1873, apply) the fugitive criminal may, if the Central Government thinks fit and the offence is not of a political character, be surrendered if a requisition is made.¹

But if the foreign State is not of the above description, then there is no Act, or provision in any Act, for the giving up of a foreign subject, found in British India, who has committed a crime in that State.

Extradition, as between the British Government and Non-Asiatic States, is granted only if there is any treaty. Such are the Portuguese Treaty Act (IV of 1880) and the Treaty with France (1900).

(3) Where a person accused of having committed an offence specified in s. 9 of the Fugitive Offenders' Act, 1881, or s. 19(d) of the Indian Extradition Act (viz.,

¹ The Indian Extradition Act, XV of 1903, s. 7 (1). ² *Ibid.*, s. 8.

treason or any other offence punishable with rigorous imprisonment for a term of twelve months or more, or with any greater punishment), in one part of His Majesty's dominions, has left that part, such person, if found in another part of His Majesty's dominions, shall be liable to be apprehended and returned in manner provided by the Fugitive Offenders' Act to the part from which he is a fugitive.

(II) **Extra-territorial jurisdiction.**—British Indian Courts are empowered to try offences committed out of British India either on (A) land or (B) high seas.

(A) **Land.**—By virtue of ss. 3 and 4 of the Penal Code, and s. 188 of the Code of Criminal Procedure, local Courts can take cognizance of offences committed beyond the territories of British India. Where the Court is dealing with an act committed outside British India by an Indian subject which would be an offence punishable under the Penal Code if it had been committed in British India, s. 4 constitutes the act an offence and it can be dealt with under s. 188 of the Criminal Procedure Code.¹

Section 188 of the Criminal Procedure Code provides that—

(a) When a Native Indian subject of His Majesty commits an offence at any place without and beyond the limits of British India, or

(b) when any British subject commits an offence in the territories of any Native Prince or Chief in India, or

(c) when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :—

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India, and, where there is no Political Agent, the sanction of the Provincial Government shall be required.

The word 'found' in this section means not where a person is discovered but where he is actually present.² A man brought to a place against his will can be said to be found there.³ When a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The Bombay High Court has laid down this principle, following English precedents, in *Savarkar's case*. The accused Savarkar had escaped at Marseilles from the custody of police-officers charged with the duty of bringing him from London to Bombay, but was re-arrested there and brought to Bombay and committed for trial by the Special Magistrate at Nasik. The High Court held that the trial and committal were valid.⁴

The words 'Native Indian subject' mean only native subjects *de jure* and not *de facto*. Occasional residences in British territory cannot be taken to render a person, who is not *de jure* a subject, a subject for the purpose of criminal jurisdiction being exercised over him for an act committed in a foreign territory, which, if committed within British territory, would have been an offence cognisable by British Courts.⁵

¹ *Narayan Mahale*, (1935) 37 Bom. (M. C.) 48.

L. R. 585.

² *Maganiat*, (1882) 6 Bom. 622.

³ *Lopez and Satter*, (1858) 27 L. J.

⁴ *Vinayak D. Savarkar*, (1910) 13 Bom. L. R. 296, 35 Bom. 225.

⁵ *Fakir*, (1884) P. R. No. 1 of 1885.

Section 4 gives extra-territorial jurisdiction but as the Explanation says the acts committed must amount to an offence under the Penal Code.¹ Taking part in a marriage which is prohibited by the Child Marriage Restraint Act by a British Indian subject beyond British India is not an offence which can be punished in British India because the act is not made punishable under the Code.²

The Governor-General in Council can by order authorize and empower any High Court to exercise all or any portion of the jurisdiction and powers conferred on it by His Majesty's Letters Patent, in respect of Christian subjects of His Majesty resident within the dominions of Princes and States of India in alliance with His Majesty.³

Acts done within British as well as foreign territory.—A person who is a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, partly within and partly without the British territories, provided the acts amount together to an offence under the Code.⁴

Subsequent annexation or transfer of territory where offence is committed.—A person, after having committed dacoity attended with murder, absconded to Bhootan, which was subsequently annexed by the British Government. It was held that he could be tried and convicted for the offence by the British Courts.⁵ Similarly, where certain persons were charged with committing an offence at a place in British India and committed to a Court of Session, and the place where the offence was committed became part of a Native State subsequently, it was held that the British Courts were not deprived of jurisdiction inasmuch as at the time of the transfer of the place where the offence was committed the accused were in British India in custody in point of law of a Court of competent jurisdiction.⁶

(B) High seas.—Admiralty jurisdiction.—The jurisdiction to try offences committed on the high seas is known as the admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

Admiralty jurisdiction extends over—

- (1) Offences committed on British ships on the high seas.
- (2) Offences committed on foreign ships in British territorial waters.
- (3) Pirates.

Admiralty jurisdiction extends over British ships, not only on the high seas but also in rivers below the bridges, where the tide ebbs and flows and where great ships go.⁷ It extends over British ships although they may be at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction, if invoked. Ever since the time of Richard II this jurisdiction has extended to where great ships go as part of their voyage for the purposes of trading, and all persons, whether British subjects or foreigners, who happen to be on board such ships, are entitled to the protection of English law.⁸ It makes no difference whether the offender comes voluntarily on board the British ship or is brought and detained there against his will; nor whether he comes voluntarily within the jurisdiction

¹ *Rambharthi*, (1923) 25 Bom. L. R. 772, 47 Bom. 907; *Sheikh Haidar v. Syed Issa*, [1930] Nag. 241.

² *Sheikh Haidar v. Syed Issa*, [1930] Nag. 241.

³ 28 & 29 Vic., c. 15, s. 3.

⁴ *Moulvi Ahmudollah*, (1865) 2 W. R. (Cr.) 60.

⁵ *Roopa*, (1865) 2 W. R. (Cr.) 49.

⁶ *Ram Naresh Singh*, (1911) 34 All. 118; *Ganga*, (1912) 34 All. 451.

⁷ *Anderson*, (1868) L. R. 1 C. C. R. 161.

⁸ *Anderson*, (1868) L. R. 1 C. C. R. 161; *Carr*, (1882) 10 Q. B. D. 76, 86.

of the particular Court by which he is tried or is brought within that jurisdiction against his will.¹ If one foreigner inflicts a blow on another foreigner in a foreign vessel on the high seas, and the person so struck a few days afterwards lands in England and dies there, the homicide is not cognizable by English Courts.²

The admiralty jurisdiction does not extend to any river, creek, or port within the body of a district. In such cases the ordinary criminal Courts have jurisdiction.

With regard to the seashore, the ordinary criminal Courts and the Courts of Admiralty have alternate jurisdiction between high and low watermark.³

Offences committed on the high seas could not be tried at first by ordinary criminal Courts. They were only dealt with by the Admiralty Court. But now by virtue of the Admiralty Offences Act, 1849,⁴ and the Merchant Shipping Act, 1894,⁵ such offences are triable in England as well as in India by ordinary criminal Courts, as if they were committed within the local jurisdiction of those Courts.

Piracy.—Piracy is of two kinds, viz., piracy *jure gentium*, and piracy by the statute law of England. Piracy *jure gentium* is an offence against all nations. "The offence of piracy by common law," according to Blackstone,⁶ "consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there." A pirate is one who is a source of danger to the vessels of all nations. To whatever country the pirate may have originally belonged, he is triable everywhere, his detestable occupation has made him the enemy of mankind, and he cannot upon any ground claim immunity from the tribunal of his captor.⁷ Actual robbery is not an essential element of the crime of piracy *jure gentium*. A frustrated attempt to commit a piratical robbery is equally piracy *jure gentium*.⁸

If the subjects of the same State commit robbery upon each other, upon the high seas, it is piracy. If the subjects of different States commit robbery upon each other, upon the high seas, if their respective States be in amity, it is piracy; if at enmity, it is not; for it is a general rule, that enemies can never commit piracy on each other, their depredations being deemed mere acts of hostility.⁹

The admiralty jurisdiction extends to pirates who are foreigners in the case of piracy *jure gentium* only.

Jurisdiction of Indian High Courts.—The High Courts of Bombay, Calcutta and Madras have the same admiralty jurisdiction as that of the late Supreme Courts. The jurisdiction of the Supreme Courts was that of the High Court of Admiralty in England as it stood in 1823. The jurisdiction of the Supreme Courts in Vice-Admiralty was created by commission from the High Court of Admiralty in England in 1843. Under Act XVI of 1891, the High Courts of Bengal, Madras and Bombay are declared to be Colonial Courts of Admiralty within the meaning of statute 53 & 54 Vic., c. 27. The effect of these statutes is to confer upon these High Courts the same jurisdiction as is vested in the Admiralty Courts of England.

The offences which come within the admiralty jurisdiction are now defined by the Merchant Shipping Act, 1894.

¹ *Lopez and Sattler*, (1838) Dears. & B. 525.

² *Lewis*, (1837) 26 L. J. (M. C.) 104, Dears. & B. 182.

³ 8 Coke 113.

⁴ 12 & 13 Vic., c. 96.

⁵ 57 & 58 Vic., c. 60.

⁶ Blackstone's Com. on the Laws of England, Vol. IV, p. 72 (4th edn.).

⁷ Phillimore, International Law, Vol. 1, p. 488 (3rd edn.).

⁸ *Piracy Jure Gentium*, [1894] A. C. 586.

⁹ 4 Coke 154.

Jurisdiction of mofussil Courts.—The jurisdiction to try offences committed on the high seas was conferred on mofussil Courts by 12 & 13 Vic., c. 96, declared applicable to India by section 1 of 23 & 24 Vic., c. 88. Prior to the passing of the latter statute these Courts had no such jurisdiction. This jurisdiction has also been conferred by section 686 of the Merchant Shipping Act of 1894.¹

Presidency Magistrates' Courts.—The Bombay High Court has held that the Presidency Magistrate has jurisdiction to try offences committed on a British ship during her voyage on the high seas.² The Calcutta High Court is of opinion that such jurisdiction is vested in the High Court under the Merchant Shipping Act.³

Law and procedure to be followed.—Under the provisions of 12 & 13 Vic., c. 96, extended to India by 23 & 24 Vic., c. 88, persons charged with crimes on the high seas may be proceeded against in the Courts of British India in the same way as if the offence had been committed upon any waters situate within the limits of British India and within the limits of the local jurisdiction of its criminal Courts, and on conviction may be punished as if their crimes had been committed in England. Hence it was held⁴ that the English law should be the substantive law of decision in cases made cognizable by the local tribunals by virtue of that statute. But now it is provided by s. 3 of 37 & 38 Vic., c. 27, that a person committing an offence on the high seas shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the offence had been committed within the limits of British India: provided that if the offence is not punishable by the law of British India, the person shall, on conviction, be liable to such punishment (other than capital punishment), as shall seem to the Court most nearly to correspond to the punishment to which such person would have been liable in case such offence had been tried in England. The statute, therefore, applied local punishment, that is, punishment under the Indian Penal Code, in the first instance. The procedure to be followed in such cases is the ordinary criminal procedure⁵ and the offence charged must be an offence under the English law.⁶ Thus we have the three following conditions necessary—

- (1) The offence must be an offence under the English law.
- (2) The trial must be conducted under the Code of Criminal Procedure.
- (3) The punishment must be regulated by the Indian Penal Code.

Liability of foreigners in British India for offences committed outside its limits.—The acts of a foreigner committed by him in territory beyond the limits of British India do not constitute an offence against the Penal Code, and, consequently, a foreigner cannot be held criminally responsible under that Code by the tribunals of British India for acts committed by him beyond its territorial limits. It is only for acts done when the person doing them is within that territory over which the authority of British law extends, that the subject of a foreign State owes obedience to that law and can be made amenable to its jurisdiction. Thus, when it is sought to punish a person, who is not a British subject, as an offender in respect of a certain act, the question is not 'where was the act committed,' but 'was that

¹ 57 & 58 Vic., c. 60.

² *Chief officer of the SS. Mush-tari*, (1901) 3 Bom. L. R. 253, 25 Bom. 636.

³ *Sakimullah*, (1912) 39 Cal. 487.

⁴ *Elmstone*, (1870) 7 B. H. C. (Cr. C.) 89; *Thompson*, (1867) 1 Beng. L. R.

(O. Cr. J.) 1.

⁵ *Elmstone*, (1870) 7 B. H. C. (Cr. C.) 89; *Thompson*, (1867) 1 Beng. L. R. (O. Cr. J.) 1; *Barton*, (1889) 16 Cal. 238; *Gunning*, (1894) 21 Cal. 782.

⁶ *Gunning*, *ibid.*

person at the time, when the act was done, within the territory of British India? For, if he was not, the act is not an offence, the doer of it is not liable to be punished as an offender, and he is, therefore, not subject to the jurisdiction of criminal Courts.¹

A foreign subject, resident in a foreign territory instigating the commission of an offence which, in consequence, is committed in British territory, is not amenable to the jurisdiction of a British Court if the instigation has not taken place in British India.² But if a foreigner in foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed.³

CASES.—Admiralty jurisdiction.—English cases.—The accused, an English sailor, stole three chests of tea out of a British vessel when it was lying in a river in China. It was urged that as the vessel was twenty or thirty miles from the sea, the offence was not committed on the high seas. It was held that the offence was committed within the admiralty jurisdiction.⁴ An American, serving on board a British ship, caused the death of another American serving on the same ship, under circumstances amounting to manslaughter, the ship at the time being in the river Garonne, within French territory, at a place below bridges where the tide ebbed and flowed and great ships went. It was held that the ship was within the admiralty jurisdiction, and that the prisoner was rightly tried and convicted at the Central Criminal Court.⁵ A foreigner, having committed larceny in England, was followed to Hamburg by an English police-officer who arrested him without a warrant, and brought him against his will on board an English steamer trading between Hamburg and London, and there kept him in custody in order that he might be tried for the larceny in England. During the voyage, whilst the steamer was on the high seas, he shot the officer out of malice prepense and not with a view to escape. It was held that he was guilty of murder within the admiralty jurisdiction.⁶ Certain bonds were stolen from a British ship, whilst she was lying afloat in the river at Rotterdam, moored to the quay, and were afterwards wrongfully received in England by the accused with a knowledge that they had been stolen. The place where the ship lay at the time of the theft was in the open river sixteen or eighteen miles from the sea, but within the ebb and flow of the tide, and where large vessels usually lay. It did not appear who the thief was, or under what circumstances he was on board the ship. It was held that the larceny took place within the admiralty jurisdiction.⁷ Where the accused and the deceased were foreigners, and the latter died at Liverpool from injuries inflicted by the accused on board a foreign ship on the high seas, it was held that the English Courts had no jurisdiction to try the accused.⁸

Liability of foreigners in British India for offences committed outside its limits.—Where the accused committed dacoity in the Patiala State, but were found in British territory where they had stayed for three years, it was held that they were not liable to be tried by the British Court as they were foreign subjects,

¹ *Musst. Kishan Kour*, (1878) P. R. No. 20 of 1878; *Jameson*, [1890]

² Q. B. 425.

³ *Pirtai*, (1878) 10 B. H. C. (Cr. C.) 350; *Raj Bahadur*, (1918) P. R. No. 23 of 1918.

⁴ *Chhotatal Babar*, (1912) 14 Bom. L. R. 147.

⁵ *Thomas Allen*, (1887) 1 Moody

C. C. 494.

⁶ *Anderson*, (1868) L. R. 1 C. C. R. 161.

⁷ *Lopez and Sattler*, (1858) Dears. & B. 525.

⁸ *Carr*, (1882) 10 Q. B. D. 76.

⁹ *Lewis*, (1837) 26 L. J. (M. C. 104, Dears. & B. 182.

and the offence was committed in foreign territory.¹ A girl was enticed away in the Faridkote State from the lawful guardianship of her husband by the accused, who were foreign subjects, and was found being conveyed by them by rail from that State to a station in the Bhawalpur State at the railway station of Abdhar in the British territory. It was held that, as the act of kidnapping was complete outside British India, the British Courts had no jurisdiction to try and convict the accused.² The accused, a subject of the Indian State of Junagadh, was charged with the offence of attempt to murder, on board a ship belonging to him on the high seas some eighteen miles off the coast of the Kanara district. It was held that the Magistrate of that district had no jurisdiction to try the accused.³

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85,¹ or of any Act of Parliament passed after that Statute in anywise affecting the East India Company or British India, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of Her Majesty, or of any special or local law.²

* Certain laws not to be affected by this Act.

COMMENT.—This section acts as a saving clause to s. 2. Though the Code was intended to be a general one, it was not thought desirable to make it exhaustive, and hence offences defined by local and special laws were left out of the Code, and merely declared to be punishable as theretofore.⁴

1. 'Statute 3 and 4 William IV, Chapter 85.'—This statute is known as "the Government of India Act, 1833." Section 51 of this statute says that the Sovereign legislative power for British India is, as for all parts of His Majesty's Dominions, the Sovereign and Parliament, who in delegating a power of legislation to the Governor-General in Council has expressly reserved the right to continue to legislate for the territories and inhabitants of British India.

2. 'Special or local law'.—Although an offence is expressly made punishable by a special or local law, yet it will be punishable under the Penal Code, if the facts come within the definitions of the Code.⁵ No such prosecution is admissible, if it appears upon the whole frame of the special Act that it was intended to be *complete in itself*, and to be enforced only by the penalties created by it;⁶ but in the absence of anything in a special Act to exclude the operation of the Code, an intention on the part of the Legislature to exclude it should not be inferred.⁷ The distinction between a statute creating a new offence with a particular penalty and a statute enlarging the ambit of an existing offence by including new acts within it with a particular penalty is well settled. In the former case the new offence is punishable by the new penalty only, in the latter it is punishable also by all such penalties as were applicable before the Act to the offence in which it is included. The principle

¹ *Nawabji*, (1881) P. R. No. 37 of 1881; *Ibrahim*, (1893) P. R. No. 7 of 1894.

² *Jaimal Singh*, (1900) P. R. No. 1 of 1901.

³ *Punja Guni*, (1917) 20 Bom. L. R. 98, 42 Bom. 234.

⁴ (1866) 3 M. H. C. (Appx.) 11, 16.

⁵ *Ramachandruppa*, (1883) 6 Mad. 249; *Motilal Shah*, (1930) 32 Bom. L. R. 1502, 55 Bom. 89.

⁶ *Chandi Pershad v. Abdur Rahman*, (1894) 22 Cal. 131.

⁷ *Imam Bakhsh*, (1884) P. R. No. 10 of 1885.

is that where a new offence is created and the particular manner in which proceedings should be taken is laid down, then proceedings cannot be taken in any other way.¹ However, a person cannot be punished under both the Penal Code and a special law for the same offence,² and ordinarily the sentence should be under the special Act.³ This is, however, confined to cases where the offences are coincident or practically so.⁴

Punishment for contempt under common law.—This section does not affect the common law principles introduced into the Presidency-towns when the late Supreme Courts were established. The High Courts in the Presidencies have power to punish the offence of contempt on a summary proceeding in relation to proceedings before them not by virtue of the Penal Code but by virtue of the common law of England.⁵ The Rangoon High Court has held that the High Court has power to deal with contempts summarily, instead of acting under s. 476 or 480 of the Code of Criminal Procedure or under Order XVI, r. 17, of the Code of Civil Procedure.⁶

The High Court has power to punish, by commitment for contempt, a libel published while the Court is not sitting.⁷

The Calcutta High Court laid down that it had no jurisdiction to commit a person for contempt of a criminal Court in the mofussil.⁸ The Bombay High Court,⁹ and the Allahabad High Court¹⁰ were of opinion that the High Court had such power. The latter view has been adopted in the Contempt of Courts Act, 1926, s. 2.¹¹

All other Courts including the Judicial Commissioners' Courts can only take action for contempt of Court under s. 228 of the Penal Code and s. 480 of the Code of Criminal Procedure.¹²

CHAPTER II.

GENERAL EXPLANATIONS.*

This Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained, and the meanings thus announced are steadily adhered to throughout the subsequent chapters.

¹ *Bhalchandra Ranadive*, (1929) 31 Bom. L. R. 1151, 1178, 54 Bom. 35.

² *Hussun Ali*, (1873) 5 N. W. P. 49.

³ *Kuloda Prasad Majumdar*, (1906) 11 C. W. N. 100; *Bhogilal*, (1931) 33 Bom. L. R. 648.

⁴ *Joti Prasad Gupta*, (1931) 53 All. 642, 649; *Suchit Raut*, (1929) 9 Pat. 120.

⁵ *Legal Remembrancer v. Matilal Ghose*, (1918) 41 Cal. 173; *Surendro Nath Banerjee v. The Chief Justice and Judges of the High Court*, (1883) 10 Cal. 109, P.C.; *Moti Lal Ghose*, (1917) 45 Cal. 169; *M. K. Gandhi*, (1920) 22 Bom. L. R. 368; *Satyabodha Ramchandra*, (1922) 24 Bom. L. R. 928; *Marmaduke Pickthall*, (1922) 25 Bom. L. R. 15; *Marmaduke Pickthall (No. 2)*, (1922) 25 Bom.

L. R. 107; *Purshottam v. Navanilal*, (1925) 28 Bom. L. R. 148; *Ponnuswami Iyer v. Ganapathi Iyer*, (1923) 45 M. L. J. 742; *Sayya Habib*, (1925) 6 Lah. 528; *Harkishen Lal*, (1936) 18 Lah. 69.

⁶ *Ebrahim Mamoojee*, (1920) 4 Ran. 257.

⁷ *William Tayler*, (1869) 26 C. L. J. 345; *Banks*, (1869) 26 C. L. J. 401.

⁸ *Amrita Bazar Patrika*, (1918) 17 C. W. N. 1253, 1282.

⁹ *Balkrishna Govind Kulkarni*, (1921) 24 Bom. L. R. 16.

¹⁰ *Abdul Hasan Jauhar*, (1926) 48 All. 711.

¹¹ *Bennet Coleman & Co., Ltd. v. G. S. Monga*, (1937) 18 Lah. 34.

¹² *Venkatrao*, (1922) 24 Bom. L. R. 386, 46 Bom. 973.

6. Throughout this Code every definition of an offence, every penal provision and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision or illustration.

Definitions in the Code to be understood subject to exceptions.

ILLUSTRATIONS.

(a) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) A, a police-officer, without warrant, apprehends Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Sense of expression once explained.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Number."

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Man." "Woman."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Person."

COMMENT.—The word 'person' includes artificial or juridical persons. An idol is a juridical person capable of owning property and is therefore a 'person'.¹

12. The word "public" includes any class of the public or any community.

"Public".

COMMENT.—This definition is inclusive and does not define the word 'public'. It only says that any class of public or any community is included within the term 'public'. A particular locality may come within the term 'public'.²

¹ *Vadivelu*, [1944] Mad. 685.

² *Harnandan Lal v. Rampalak Māhto*, (1938) 18 Pat. 76.

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

14. The words "servant of the Queen" denote all officers or servants continued, appointed or employed in India by or under the authority of the Government of India Act, 1935, or by or under the authority of any Government in British India or of the Crown Representative.

15. [Definition of "British India".] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937; and the Government of Burma (Adaptation of Laws) Order, 1937.

16. [Definition of "Government of India".] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937; and the Government of Burma (Adaptation of Laws) Order, 1937.

17. The word "Government" denotes the person or persons authorized by law to administer executive Government in any part of British India.

COMMENT.—The Ministers of a Province are not vested with any right to exercise executive authority. They are merely the Governor's advisers and are not "Government" within the meaning of this section.¹

18. [Definition of "Presidency".] Repealed by the Government of India (Adaptation of Indian Laws) Order, 1937.

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

ILLUSTRATIONS.

- (a) A Collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.
- (b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.
- (c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.
- (d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

COMMENT.—The illustrations show that a person other than one who is officially designated as a Judge and who is empowered to give a definitive judgment, is a Judge only when he is exercising jurisdiction in a suit or in a proceeding. So far

¹ *Hemendra Prasad Ghosh*, [1939] 2 Cal. 411.

as that suit or proceeding—revenue, civil, or criminal—is concerned, he is a Judge, but he is not a Judge when he has not the seisin of the case in which he can give a definitive judgment.¹

Illustration (d) is very important as it indicates that a Magistrate, who has power to try and determine suits, is a Court of Justice.

20. The words “Court of Justice” denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

ILLUSTRATION.

“A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

21. The words “public servant” denote a person falling under any “public servant.” of the descriptions hereinafter following, namely :—

First.—Every Covenanted servant of the Queen ;

Second.—Every Commissioned Officer in the Military, Naval or Air Forces of the Queen while serving under any Government in British India or the Crown Representative ;

Third.—Every Judge ;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorised by a Court of Justice to perform any of such duties.

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth.—Every officer of the Crown whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or extend any property on behalf of the Crown, or to make any survey, assessment or contract on behalf of the Crown, or to execute

¹ *Ramchandra Modak*, (1925) 5 Pat. 110, 415.

any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Crown, or to make, authenticate or keep any document relating to the pecuniary interests of the Crown, or to prevent the infraction of any law for the protection of the pecuniary interests of the Crown, and every officer in the service or pay of the Crown or remunerated by fees or commission for the performance of any public duty ;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district ;

ILLUSTRATION.

A Municipal Commissioner is a public servant.

Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Explanation 3.—The word ‘election’ denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

COMMENT.—A line is drawn between the great mass of the community and certain classes of persons in the service and pay of Government, or exercising various public functions, who are here included in the words “public servant.” Those offences which are common between public servants and other members of the community are left to the general provisions of the Code. But there are several offences which can only be committed by public servants and, on the other hand, public servants in the discharge of their duties have many privileges peculiar to themselves.¹

Explanation 2.—The person who in fact discharges the duties of the office which brings him under some one of the descriptions of public servant, is for all the purposes of the Code rightfully a public servant, whatever legal defect there may be in his right to hold the office.²

¹ M. & M. 20.

² *Ramkrishna Das*, (1871) 7 Beng. L. R. 446, 448.

22. The words "moveable property" are intended to include corporeal property¹ of every description, except land and things attached to the earth² or permanently fastened to anything which is attached to the earth.

COMMENT.—This definition is restricted to corporeal property; it excludes all choses in action.

1. 'Corporeal property' is property which may be perceived by the senses, in contradistinction to incorporeal rights, which are not so perceivable, as obligations of all kinds. Thus, salt produced on a swamp,¹ and papers forming part of the record of a case,² are property within the meaning of this section.

2. 'Land and things attached to the earth.'—This section does not exempt "earth and things attached to the earth," but "land and things attached to the earth"; "land" and "earth" are not synonymous terms, and there is a great distinction between "the earth," and "earth". By severance, things that are immoveable become moveable; and it is perfectly correct to call those things attached which can be severed; and undoubtedly it is possible to sever earth from the earth and attach it again thereto. Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, are moveable property capable of being the subject of theft.³ Any part of "the earth," whether it be stones or sand or clay or any other component, when severed from "the earth," is moveable property.⁴

23. "Wrongful gain" is gain by unlawful means of property to "Wrongful gain." which the person gaining is not legally entitled.

"Wrongful loss" is the loss by unlawful means of property to which "Wrongful loss." the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property,¹ as well as when such person is wrongfully deprived of property.

COMMENT.—The word 'wrongful' means prejudicially affecting a party in some legal right. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it. Thus, where a pledgee used a turban that was pledged, it was held that the deterioration of the turban by use was not 'wrongful loss' of property to the owner, and the wrongful beneficial use of it by the pledgee was not a 'wrongful gain' to him.² Forcible and illegal seizure of bullocks of a widow in satisfaction of a debt due to the accused by her deceased husband was held to be a 'wrongful loss.'³ Where a person, who purchased rice from a famine relief officer, at a certain rate on condition that he should sell

¹ *Tamma Ghanthaya*, (1881) 4 Mad. 228.

² *Ramaswami Aiyar v. Vaithilinga Mudali*, (1882) 1 Weir 28.

³ *Shivaram*, (1891) 15 Bom. 702, 703.

⁴ *Suri Venkatappayya Sastri v.*

Madula Venkanna, (1904) 27 Mad. 531, 535, F.B., overruling *Kotayya*, (1887) 10 Mad. 255.

⁵ (1866) 3 M. H. C. (Appx.) 6.

⁶ *Preonath Banerjee*, (1866) 5 W. R. (Cr.) 68.

it at a ~~grossed~~ ^{grossed} the rupee less, did not sell it at the rate agreed upon, but at four pence the rupee less, it was held that no wrongful gain or wrongful loss had been caused to anyone within the meaning of this section. The rice having been sold to the accused, and he having paid for it, it was not unlawful for him to sell it again at such prices as he thought fit.¹

1. 'Wrongfully kept out of any property.'—When the owner is kept out of possession of his property with the object of depriving him of the benefit arising from the possession even temporarily, the case will come within the definition. If a creditor by force or otherwise takes the goods of his debtor out of his possession against his will in order to put pressure on him to compel him to discharge his debt he will be guilty of theft by causing wrongful loss to the debtor.²

Fees payable to a college for attending lectures are 'property' within the meaning of this section.³

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly."

COMMENT.—From this definition it will appear that the term 'dishonestly' is not used in the Code in its popular significance. Unless there is wrongful gain to one person, or wrongful loss to another, an act would not be 'dishonest.'

25. A person is said to do a thing fraudulently if he does that thing "fraudulently." with intent to defraud⁴ but not otherwise.

COMMENT.—The word 'fraudulently' is not confined to transactions of which deprivation of property forms a part.⁵ The intention with which an act is done is very important in determining whether the act is done 'dishonestly' or 'fraudulently.'

Where an offence depends upon proof of intention the Court must have proof of facts sufficient to justify it in coming to the conclusion that the intention existed. No doubt one has usually to infer intention from conduct, and one matter that has to be taken into account is the probable effect of the conduct. But that is never conclusive.⁶

1. 'Intent to defraud.'—The terms 'fraud' and 'defraud' are not defined in the Penal Code. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation, and, as it is not defined, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found.⁷ Sir James Stephen⁸ observes: "Whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime: namely, first, deceit or an intention to deceive or in some cases mere secrecy; and, secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent, I may add, is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. The injurious deception is

¹ *Lal Mahomed*, (1874) 22 W. R. (Cr.) 82.

² *Sri Churn Churngo*, (1895) 22 Cal. 1017, F.S.; *Ganpat*, (1930) 32 Bom. L. R. 351.

³ *Soshi Bhushan*, (1893) 15 All. 210, 216.

⁴ *Abbas Ali*, (1896) 25 Cal. 512, F.S.

⁵ *Ramchandra Gujar*, (1937) 39 Bom. L. R. 1184, [1938] Bom. 114.

⁶ *Abbas Ali*, sup.

⁷ History of Criminal Law of England, Vol. II, p. 121.

usually intended only as a means to an end, though this, as I have already explained, does not prevent it from being intentional. . . A practically conclusive test as to the fraudulent character of a deception for criminal purpose is this: Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, it is hardly possible that that advantage should not have had an equivalent in loss, or risk of loss, to someone else; and if so, there was fraud. In practice people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent."

Defrauding involves two conceptions, namely, deceit and injury (*i.e.*, infringement of some legal right) to the person deceived.¹ Where there is an intention to deceive and by means of deceit to obtain an advantage there is fraud.² The intention to deceive may be from any expectation of advantage to the party himself, or from ill-will towards the other.³

A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, is sufficient to support a conviction.⁴ In order to prove an intent to defraud, it is not at all necessary that there should have been some person defrauded, or who might possibly have been defrauded. A man may have an intent to defraud, and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque either to try his credit, or to imitate his handwriting, there would be no *intent* to defraud, though there would be parties who might be defrauded; but where another person has no account at his bankers, but a man *supposes* that he has, and on that supposition forges his name, there would be an intent to defraud in that case, although no person could be defrauded.⁵

'Fraudulently'; 'dishonestly.'—There is a real distinction between the meanings of the terms 'fraudulently' and 'dishonestly'; the former denotes an intent to deceive. The production of a forged bond by a person in a suit with the intent to make the Court believe that he was entitled to recover money upon the basis of the particular document produced, though it may not be dishonest within the meaning of s. 24, may yet be fraudulent within the meaning of s. 471.⁶ ✓

The difference between an act done dishonestly and an act done fraudulently is that if there is the intention by the deceit practised to cause wrongful loss that is dishonesty, but even in the absence of such an intention, if the deceitful act wilfully exposes anyone to risk of loss, there is fraud.⁷

CASES.—*Intent to defraud.*—The accused in order to obtain recognition from a Settlement Officer that they were entitled to the title of "Loskur" filed a *sunnad* before that officer purporting to grant that title. This document was found not to be genuine and they were convicted under ss. 471 and 404. It was held that they could not be found guilty as their intention was not to cause wrongful gain or wrongful loss to anyone, but to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of "Loskur", and that this could not be said to constitute an intention to 'defraud'.⁸

¹ *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.

² *Muhammad Saeed Khan*, (1898) 21 All. 113, 115.

³ *Vithal Narayan*, (1886) 13 Bom. 515n.; *Haycraft v. Creasy*, (1801) 2 East 92, 108.

⁴ *Dhunum Kazee*, (1882) 9 Cal. 53, 60.

⁵ *Per Maule, J.*, in *Nash's Case*, (1852) 2 Den. C. C. 493, 499.

⁶ *Kedar Nath Chatterjee*, (1901) 5 C. W. N. 897.

⁷ *Sukhamoy Maitra*, (1937) 16 Pat. 688, 706.

⁸ *Jan Mahomed*, (1884) 10 Cal. 584.

Where the accused, after the execution and registration of a document, which was not required by law to be attested, added his name to the document as an attesting witness, it was held that his act was neither fraudulent nor dishonest and the accused was, therefore, not guilty of forgery.¹ ✓

26. A person is said to have "reason to believe" a thing if he has
 "Reason to believe." sufficient cause to believe that thing but not otherwise.

27. When property is in the possession of a person's wife,¹ clerk, or
Property in possession of wife, clerk or servant. servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk, or servant, is a clerk or servant within the meaning of this section. ✓

COMMENT.—Under this section property in the possession of a person's wife, clerk, or servant, is deemed to be in that person's possession.

This section abrogates the distinction made by English law between 'possession' and 'custody'.²

Corporeal property is in a person's possession when he has such power over it that he can exclude others from it, and intends to exercise, if necessary, that power on behalf of himself or of some person for whom he is trustee. But a wife, a clerk or a servant, has not this power or intention to deal with things in their charge as owners. They are, therefore, said to have *custody* merely according to the English law. The word 'custody' means "such a relation towards a thing as would constitute possession if the person having custody had it on his own account." ✓

A man's goods are in his possession not only while they are in his house or on his premises, but also when they are in a place where he may usually send them (as when horses and cattle feed on common land), or in a place where they may be lawfully deposited by him, as if he buries money or ornaments in his own land, or puts them in any other secret place of deposit.

1. 'Wife'.—A permanent mistress may be regarded as a 'wife'. When a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress' possession.³

28. A person is said to "counterfeit" who causes one thing to
 "Counterfeit." resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1.—It is not essential to counterfeiting that the imitation should be exact.

¹ *Surendra Nath Ghosh*, (1910) 14 Cal. 477, F.B.
 W. N. 1070.

² *Fateh Chand Agarwalla*, (1916) 44 of 1914.

³ *Banwari Lal*, (1914) P. R. No. 20

Explanation 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

COMMENT.—For a thing to be termed 'counterfeit,' there should be some sort of resemblance sufficient to cause deception. If there is no such resemblance, it cannot be said to be 'counterfeit,' e.g., a counterfeit currency note which would not even deceive a villager.¹ The word 'counterfeit' does not connote an exact reproduction of the original counterfeited. The difference between the counterfeit and the original is not therefore limited to a difference existing only by reason of faulty reproduction.²

The word 'counterfeit' occurs in offences relating to coin provided in Chapter XII and offences relating to trade and property marks in Chapter XVIII.

The 'thing' counterfeited may be a coin or a piece of metal. Its value is immaterial. The counterfeited coin may be more valuable so far as money value is considered than the coin for which it is intended to pass.

If coins are made to resemble genuine coins and the intention of the makers is merely to use them in order to foist a false case upon their enemies, those coins do not come within the definition of counterfeit coins.³

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

"Document."

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

ILLUSTRATIONS.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

ILLUSTRATION.

A writes his name on the back of a bill of exchange payable to his order. The

¹ *Jwala*, (1928) 51 All. 470.

Jain, [1938] Nag. 192.

² *Local Government v. Seth Motilal* ³ *Velayudham*, [1938] Mad. 80.

meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

COMMENT.—A writing which is not legal evidence of the matter expressed, may yet be a document if the parties framing it *believed* it to be, and *intended* it to be, evidence, of such matter.¹ An agreement in writing, which purported to be entered into between five persons, was signed by only two of them. It was held that it was a 'document' within the meaning of this section though it was not signed by all the parties thereto.² Letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the Ranger of a forest, are document.³

30. The words "valuable security" denote a document which is, or purports to be,¹ a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

ILLUSTRATION.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

COMMENT.—The words "valuable security" denote a particular class of documents, *v/z.*, such documents as create or extinguish legal rights.

1. 'Which is, or purports to be.'—The use of the words "which is, or purports to be" indicates that a document which, upon certain evidence being given, may be held to be invalid, but on the face of it creates, or purports to create, a right in immoveable property, although a decree could not be passed upon the document, comes within the purview of this section.⁴

31. The words "a will" denote any testamentary document.

COMMENT.—'Will' is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.⁵

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts¹ done extend also to illegal omissions.²

COMMENT.—This section puts an illegal omission on the same footing as a positive act.

1. 'Acts.'—An 'act' generally means something voluntarily done by a person, 'Act' is a determination of the will, producing an effect in the sensible world. This word includes writing and speaking, or, in short, any external manifestation. In

¹ *Sheefait Ally*, (1868) 10 W. R. 599.

(Cr.) 61, 2 Beng. L. R. 12.

² *Ramawami Ayyar*, (1917) 41

Mad. 589.

³ *Krishappa*, (1925) 27 Bom. L. R.

⁴ *Ram Harakh Pathak*, (1925) 48

All. 140.

⁵ The Indian Succession Act

(XXXIX of 1925), s. 2(h).

the Code it is not confined to its ordinary meaning of positive conduct of doing something, but includes also illegal omissions.

2. 'Omissions'—This word is used in the sense of intentional non-doing. Thus, according to this section, 'act' includes intentional doing as well as intentional non-doing. The omission or neglect must, no doubt, be such as to have an active effect conducing to the result, as a link in the chain of facts from which an intention to bring about the result may be inferred.¹ The Code makes punishable omissions which have caused, which have been intended to cause, or which have been known to be likely to cause a certain evil effect in the same manner as it punishes acts, provided they were illegal. And when the law imposes a duty to act on a person, his illegal omission to act renders him liable to punishment.²

33. The word "act" denotes as well a series of acts as a single act :
 "Act." "Omission." the word "omission" denotes as well a series of
 omissions as a single omission.

COMMENT.—The effect of s. 32 and this section taken together is that the term 'act' comprises one or more acts or one or more illegal omissions.

34. When a criminal act is done by several persons, in furtherance of the common intention¹ of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

COMMENT.—Object.—This section is intended to meet cases in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them in furtherance of the common intention of all. The reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support, and protection to the person actually committing an act.

Principle.—This section embodies the principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually.² It is a well recognised canon of criminal jurisprudence that the Courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible, as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object, each and everyone becomes responsible for the acts of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility.³ All are guilty of the principal offence, not of abetment. In combinations of this kind a mortal stroke, though given by one of the party, is deemed in the eye of the law to have been given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike.⁴ But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act.⁵ If the criminal act was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different criminal act.

¹ *Thornott Madathil Pokar*, (1886) 1 Weir 405.

² *Lalishkhan*, (1895) 20 Bom. 394.

³ *Waryam Singh*, (1941) 22 Lah. 423.

⁴ *Ganesh Singh v. Ram Raja*, (1869) 3 Beng. L. R. (P.C.) 44, 45;

Shafi Ahmed, (1925) 31 Bom. L. R. 515.

⁵ *Nga Aung Thein*, (1935) 13 Ran. 210.

⁶ *Duffey's and Hunt's Case*, (1880) Lewin 194.

Scope.—This section deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for 'that act' and 'the act' in the latter part of the section must include the whole action covered by 'a criminal act' in the first part, because they refer to it.¹ This section can be applied to an offence punishable under the second part of s. 304, though such cases may not be of frequent occurrence.²

This section provides not only for liability to punishment, but also for subjection to another jurisdiction. If a foreigner in a foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed.³

1. 'Common intention.'—'Common intention' implies prearranged plan. It must be proved that the criminal act was done in concert pursuant to the prearranged plan. The section does not say "the common intention of all" nor does it say "an intention common to all". The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. It must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone.⁴ The ratio of the above case is thus explained by Kuppuswami Ayyar, J., in a recent case:⁵ "The above decision is warrant only for the proposition that it is not enough to attract the provisions of this section that there was the same intention on the part of several people to commit a particular criminal act or a similar intention but it is necessary before the section could come into play that there must be a prearranged plan in pursuance of which the criminal act was done. Their Lordships do not rule out the possibility of a common intention developing in the course of events though it might not have been present to start with, nor do they say that the intention cannot be inferred from the conduct of the assailants. The question whether there was such an intention or not will have to depend in many cases on inference to be drawn from the proved facts, and not on any direct evidence about a preconcerted scheme or plan which may not be available at all". The prearranged plan may be made shortly or immediately before the commission of the crime. A long standing conspiracy is not required. "Same or similar intention" is not to be confused with "common intention". Persons who have a common intention must have the 'same intention'. "Same intention" must, to make it "common intention," be indicated in some way by words or acts between the persons who share it. Such intention may be inferred from circumstances.⁶ The common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime only if he has participated in that common intention.⁷

CASES.—Where each of several persons took part in beating a person so as to

¹ *Barendra Kumar Ghosh*, (1924) 52 I. A. 40, 52 Cal. 197, 211, 27 Bom. L. R. 148, overruling *Nirmal Kanta Roy*, (1914) 41 Cal. 1072, and *Profulla Kumar Mazumdar*, (1922) 50 Cal. 41.

² *Ibra Akanda*, [1944] 2 Cal. 405.
³ *Chhotatala Babar*, (1912) 14 Bom. L. R. 147.

⁴ *Mahbub Shah*, (1915) 47 Bom. L. R. 941, [1945] Lah. 367, P.C.

⁵ *Nachimuthu Goundan*, [1947] Mad. 425, 432.

⁶ *Gujraj Singh*, (1946) 21 Luck. 527.

⁷ *Nga E*, (1930) 8 Ran. 603, F.S.; *James Dowdall*, (1936) 31 N. L. R. 215; *Raja Ram*, (1938) 14 Luck. 828.

break eighteen ribs and cause his death, each of them was convicted of murder.¹ Similarly, where a number of men armed with sticks made a concerted attack upon another man and practically killed him on the spot, they were held guilty of murder.² But where three persons assaulted the deceased and gave him a beating in the course of which one struck him a blow on the head, which resulted in death, it was held that, in the absence of proof that the accused had the *common intention* to inflict injury likely to cause death, they could not be convicted of murder.³ The accused were charged under s. 302 with the murder of a postmaster. At the trial the evidence showed that while the postmaster was in his office counting money, three men, of whom the accused was one, fired pistols at him after having called upon him to hand over the money; he was hit in two places and died. The trial Judge directed the jury that if they were satisfied that the postmaster was killed in furtherance of the common intention of all three men, then the accused was guilty of murder, whether he fired the fatal shot or not. It was held by the Privy Council that the direction was correct.⁴ Where a party of men set out towards a field, with the common intention of attacking another party of men and preventing them from irrigating the field from a well, and one of the attacking party had a gun and the others had *lathis*, and all of them attacked the other party with the result that two persons died of gun-shot wounds and others received different injuries, it was held that all the participants in the attack were guilty under s. 302 of murder.⁵ Four persons went armed with guns to the house of K to commit a robbery. K being absent, S and another of robbers got to the minor son of K to take them to the field where K was working. During their absence the other two robbers remained at the house, one of them I taking his stand near the main door which he closed. Two sons of K, who were at their shops close by having had their suspicions aroused, then came to the house and pushed open the main door, whereupon I fired at them and killed one of them. It was held that S was guilty of murder in virtue of this section because, though temporarily absent, he was participating in the joint criminal action in the course of which the murder was committed.⁶

English case.—Lord Dacre agreed with several persons to hunt in another's park for deer, and to kill all who might resist. One of the party having killed the keeper, all were held guilty of the murder, though Lord Dacre was a quarter of a mile distant, and knew nothing of the individual blow.⁷

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

COMMENT.—The preceding section provided for a case in which a criminal act was done by several persons in furtherance of the common intention of all. Under this section a person assisting the accused, who actually performs the act, must be shown to have the *particular* intent or knowledge, if the act is criminal

¹ *Gour Chunder Das*, (1875) 24 W. R. (Cr.) 5; *Ratya v. Arjan*, (1886) P. R. No. 2 of 1887.

² *Sipahi Singh*, (1922) 45 All. 130; *Umed*, (1923) 45 All. 727, overruling *Bhola Singh*, (1907) 29 All. 282.

³ *Duma Baidya*, (1896) 19 Mad.

483; *Sultan*, (1930) 12 Lah. 442.

⁴ *Barendra Kumar Ghosh*, (1924) 52 I. A. 40, 52 Cal. 197, 27 Bom. L.R. 148.

⁵ *Irshad Ullah Khan*, (1933) 55 All. 607.

⁶ *Indar Singh*, (1933) 14 Lah. 814.

⁷ *Dacre's case*, 1 Hale P. C. 489.

only by reason of its being done with a criminal knowledge or intention. If several persons, having one and the same criminal intention or knowledge, jointly commit murder or an assault, each is liable for the offence as if he has acted alone; but if several persons join in an act, each having a different intention or knowledge from the others, each is liable according to his own criminal intention or knowledge, and he is not liable further. If an act which is an offence in itself and without reference to any criminal knowledge or intention on the part of the doers is done by several persons, each of such persons is liable for the offence.

Neither s. 84 nor this section provides that those who take part in the act are jointly liable for the same offence. They merely provide that each of the performers shall be liable for the act in the same manner as if the act were done by him alone.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Effect caused partly by act and partly by omission.

ILLUSTRATION.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

COMMENT.—This section follows as a corollary from s. 32. The legal consequences of an 'act' and of an 'omission' being the same, if an offence is committed partly by an act and partly by an omission the consequences will be the same as if the offence was committed by an 'act' or by an 'omission' alone.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

ILLUSTRATIONS.

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

has the same meaning as 'unlawful.'¹ It is applicable to everything (1) which is an offence, (2) which is prohibited by law, and (3) which furnishes ground for a civil action. The prohibition in the second case must be *legal*. The accused submitted to his official superior a false 'nil' return of lands in his employment, and also made a false statement to the same effect in a revenue inquiry. It was held that no offence was committed as the act of the accused was not 'illegal'.² He was doubtless guilty of a breach of a departmental order, but he was not legally bound to furnish such information within the meaning of this section.

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.
"Injury."

COMMENT.—'Injury' is an act contrary to law.³ It has the same meaning as 'unlawful'.⁴ It will include any tortious act.

A Magistrate imposed a fine in addition to a sentence of imprisonment on a conviction for the offence of causing death by a rash and negligent act and gave compensation to the widow of the deceased out of the fine imposed. It was held that compensation could not be given to her for she did not suffer any injury as here defined.⁵ It may, however, be argued that nothing could be more harmful to the mind of a woman than the death of her husband, and the section speaks of harm to the mind as 'injury.' The former Chief Court of the Punjab held that loss of her husband's support affected a widow prejudicially in a legal right, and was therefore an injury as defined in the Penal Code.⁶

45. The word "life" denotes the life of a human being, unless the "Life." contrary appears from the context.

46. The word "death" denotes the death of a human being, unless "Death." the contrary appears from the context.

47. The word "animal" denotes any living creature, other than "Animal." a human being.

48. The word "vessel" denotes anything made for the conveyance "Vessel" by water of human beings or of property.

49. Wherever the word "year" or the word "month" is used, "Year." Month." it is to be understood that the year or the month is to be reckoned according to the British calendar.

COMMENT.—A person sentenced to imprisonment for the space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect.⁷ The day on which a sentence is passed on a prisoner is calculated as a whole day.

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed "Section." numeral figures.

¹ *Fazlur Rahman*, (1929) 9 Pat. 725.

² *Appayya*, (1891) 14 Mad. 484.

³ *Swami Nayudu v. Subramania Mudali*, (1864) 2 M. H. C. 158.

⁴ *Fazlur Rahman*, (1929) 9 Pat. 725.

⁵ *Yalla Gangulu v. Mamidi Dali*,

(1897) 21 Mad. 74, F.B.

⁶ *Saif Ali*, (1898) P. R. No. 17 of 1898, F.B.

⁷ *Migott v. Colvill*, (1879) 4 C. P. D. 233.

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

COMMENT.—An oath is a religious asseveration, by which a person renounces the mercy, and imprecates the vengeance of heaven, if he do not speak the truth.¹ The form of oath differs according to the religious persuasion of the swearer. A Christian swears on the Bible, a Jew upon the Pentateuch, a Mahomedan upon the Koran, and a Hindu on the Gita. A Hindu or a Mahomedan has the statutory right to be affirmed instead of taking an oath.

52. Nothing is said to be done or believed in "good faith" which is "Good faith." done or believed without due care and attention.

COMMENT.—The definition of "good faith" given here is merely a negative one. It does not define "good faith". It says that an act is only done in good faith if it is done with due care and attention. The phrase "due care and attention" implies genuine effort to reach the truth and not the ready acceptance of an ill-natured belief. When a question arises as to whether a person acted in good faith, then it devolves upon him to show not merely that he had a good intention but that he exercised such care and skill as the duty reasonably demanded for its due discharge.²

The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. The law does not exact the same care and attention from all persons regardless of the position they occupy.³

In the General Clauses Act⁴ this expression is thus defined: "A thing shall be deemed to be done in 'good faith' where it is in fact done honestly whether it is done negligently or not."

CASES.—Arrest without proper inquiry.—A police-officer, seeing a horse resembling one which his father had lost a short time previously, tied up in B's premises, jumped at once to the conclusion that B had either stolen the horse, or had purchased it from the thief. He found that B had bought the animal from one S; so he sent for S and charged him with the theft without taking the trouble of getting any credible information as to whether it was his father's horse or not. It was held that he had acted without exercising due care and attention.⁵

Operation by unskilful person.—Where a person, uneducated in matters of surgery, operated on a man for internal piles by cutting them out with an ordinary knife, and the man died from hæmorrhage, it was held that he did not act in good faith although he had performed similar operations on previous occasions.⁶

Superstitious but rash act.—Where the accused entertained a belief that a stooping child whom he caught sight of in the early gloaming was a spirit or demon, the child being in a place which the accused and his fellow-villagers deemed to be haunted, and acting on this belief caused the death of the child by blows he inflicted before he discovered his mistake, it was held that the accused was rightly convicted.

¹ *White*, (1786) 1 Leach 368.

² *Gaya Din*, (1934) 9 Luck. 517.

³ *Bharoo Jivaji v. Mulji Dayal*, (1888) 12 Bom. 377, 393.

⁴ X of 1897, s. 3 (20).

⁵ *Sheo Surun Sahai v. Mohamed Fazil Khan*, (1868) 10 W. R. (Cr.) 20.

⁶ *Sukaroo Kobiraj*, (1887) 14 Cal. 566.

under s. 304A, for, though he was under a mistake of fact, he did not in good faith, that is, with due care and attention, believe himself justified in doing the act.¹

52A. Except in section 157, and in section 130 in the case in which

the harbour is given by the wife or husband of the
 "Harbour." person harboured, the word "harbour" includes

the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension.

COMMENT.—This section was introduced by Act VIII of 1942 to give a uniform meaning to the word 'harbour' which occurs in ss. 130, 136, 157, 212, 216A of the Code. Section 216B which defined 'harbour' for purposes of ss. 212, 216 and 216A was omitted.²

CHAPTER III.

OF PUNISHMENTS.

53. The punishments to which offenders are liable under the provisions of this Code are—

First,—Death ;

Secondly,—Transportation ;

Thirdly,—Penal servitude ;

Fourthly,—Imprisonment, which is of two descriptions, namely :—

(1) Rigorous, that is, with hard labour.

(2) Simple.

Fifthly,—Forfeiture of property ;

Sixthly,—Fine.

COMMENT.—The principal object of punishment is the prevention of offences, and the measure of punishment must, consequently, vary from time to time according to the prevalence of a particular form of crime and other circumstances. An amount of severity may be very appropriate at one time which would be quite uncalled for at another.

To the six kinds of punishments in the section, two more are added by subsequent enactments, viz., whipping and detention in reformatories. In the Madras Presidency the punishment of stocks is inflicted on offenders of lower castes.³

1. Death.—Death is the punishment that must be awarded for murder by a person under sentence of transportation (s. 303). It may be awarded as punishment for the following offences :—

(1) Waging war against the King (s. 121).

(2) Abetting mutiny actually committed (s. 132).

¹ *Hayat*, (1887) P. R. No. 11 of sons, *Gaz. of India*, 1942, Part V, p. 14. 1888. ² Mad. Reg. XI of 1816, s. 10.

³ Statement of Objects and Rea-

(3) Giving or fabricating false evidence upon which an innocent person suffers death (s. 194).

(4) Murder (s. 302).

(5) Abetment of suicide of a minor, or an insane or an intoxicated person (s. 305).

(6) Dacoity accompanied with murder (s. 396).

(7) Attempt to murder by a person under sentence of transportation, if hurt is caused (s. 397).

2. **Transportation.**—Transportation for life must be inflicted—

(1) for unlawful return from transportation (s. 226).

(2) for being a thug (s. 311).

3. **Penal servitude.**—The punishment of penal servitude, which is a substitute for transportation, is applicable only to Europeans and Americans under Act XXIV of 1855. By reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishments for that of transportation.

Penal servitude is a punishment which consists in keeping an offender in confinement and compelling him to labour. Persons sentenced to penal servitude are, during the term of the sentence, confined in such prison within British India as the Governor-General in Council directs, and kept to hard labour.¹

4. **Imprisonment.**—Imprisonment is of two kinds: (a) rigorous, and (b) simple. In the case of rigorous imprisonment the offender is put to hard labour such as grinding corn, digging earth, drawing water, cutting fire-wood, bowing wool, etc. In the case of simple imprisonment the offender is confined to jail and is not put to any kind of work.

The maximum imprisonment that can be awarded for an offence is fourteen years (s. 55). The lowest term actually named for a given offence is twenty-four hours (s. 510), but the minimum is unlimited.

The minimum term of imprisonment, however, is fixed in the following two cases:

(1) If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, he is punished with imprisonment of not less than seven years (s. 397).

(2) If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he is punished with imprisonment of not less than seven years (s. 398).

An offender is punished with rigorous imprisonment without the alternative of simple imprisonment, in the cases of—

(1) Giving or fabricating false evidence with intent to procure conviction of an offence which is capital by this Code, or by the law of England (s. 194).

(2) Unlawful return from transportation (s. 226).

(3) House-trespass in order to the commission of an offence punishable with death (s. 449).

The following offences are punishable with simple imprisonment only:—

(1) Public servant unlawfully engaging in trade; or unlawfully buying or bidding for property (ss. 168, 169).

(2) A person absconding to avoid service of summons or other proceedings from a public servant or preventing service of summons or other proceedings, or preventing publication thereof; or not attending in obedience to an order from a public servant (ss. 172, 173, 174).

¹ The Prisoners Act (III of 1900), s. 19.

(8) Intentional omission to produce a document to a public servant by a person legally bound to produce such documents; or intentional omission to give notice or information to a public servant by a person legally bound to give; or intentional omission to assist a public servant when bound by law to give assistance (ss. 175, 176, 187).

(4) Refusing oath when duly required to take oath by a public servant; or refusing to answer a public servant authorised to question or refusing to sign any statement made by a person himself before a public servant (ss. 178, 179, 180).

(5) Disobedience to an order duly promulgated by a public servant if such disobedience causes obstruction, annoyance, or injury (s. 188).

(6) Escape from confinement negligently suffered by a public servant; or negligent omission to apprehend, or negligent sufferance of escape, on the part of a public servant in cases not otherwise provided for (ss. 223, 225-A).

(7) Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding (s. 228).

(8) Continuance of nuisance after injunction to discontinue (s. 291).

(9) Wrongful restraint (s. 341).

(10) Defamation; printing or selling defamatory matter known to be so (ss. 500, 501, 502).

(11) Uttering any word, or making any sound or gesture, with an intention to insult the modesty of a woman (s. 509).

(12) Misconduct in a public place by a drunken person (s. 510).

5. Forfeiture.—The punishment of absolute forfeiture of all property of the offender is now abolished. Sections 61 and 62 of the Penal Code dealing with such forfeiture are repealed by Act XVI of 1921.

There are, however, three offences in which the offender is liable to forfeiture of specific property. They are :—

(1) Whoever commits, or prepares to commit, depredation on the territories of any power at peace with the King shall be liable, in addition to other punishments, to forfeiture of any property used, or intended to be used in committing such depredation, or acquired thereby (s. 126).

(2) Whoever knowingly receives property taken as above mentioned or in waging war against any Asiatic Power at peace with the King, shall forfeit such property (s. 127).

(3) A public servant, who improperly purchases property, which by virtue of his office he is legally prohibited from purchasing, forfeits such property (s. 160).

6. Fine.—Fine is the only punishment in the following cases :—

(1) A person in charge of a merchant vessel, negligently allowing a deserter from the Army or Navy or Air Force to obtain concealment in such vessel, is liable to a fine not exceeding Rs. 500 (s. 137).

(2) The owner or occupier of land on which a riot is committed or an unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot or unlawful assembly, is punishable with a fine not exceeding Rs. 1,000 (s. 154).

(3) The person for whose benefit a riot has been committed not having duly endeavoured to prevent it (s. 155).

(4) The agent or manager of such person under like circumstances (s. 156).

(5) False statements in connection with an election (s. 171-G.)

(6) Illegal payments in connection with an election (s. 171-H.)

(7) Failure to keep election accounts (s. 171-I.)

(9) Committing of a public nuisance not otherwise punishable, is punishable with a fine not exceeding Rs. 200 (s. 290).

(9) Voluntarily vitiating the atmosphere so as to render it noxious to the public health, is punishable with a fine of Rs. 500 (s. 278).

(10) Obstructing a public way or line of navigation, is punishable with a fine not exceeding Rs. 200 (s. 288).

(11) Publication of a proposal regarding a lottery, is punishable with a fine not exceeding Rs. 1,000 (s. 294-A.)

7. Whipping.—This form of punishment is added by the Whipping Act under which offenders are liable to whipping as an alternative or an additional punishment for certain offences.

The Whipping Act of 1909 has reduced the number of offences for which this punishment is now inflicted.

In France, Germany and the United States corporal punishment has been abolished.

8. Detention in Reformatories.—Juvenile offenders sentenced to transportation or imprisonment may be sentenced to, and detained in, a Reformatory School for a period of three to seven years.

54. In every case in which sentence of death shall have been passed, the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of death.

55. In every case in which sentence of transportation for life shall have been passed, the Provincial Government of the Province within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Commutation of sentence of transportation for life.

55A. Nothing in section fifty-four or section fifty-five shall derogate from the right of His Majesty, or of the Governor-General if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

Saving for Royal prerogative.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation according to the provisions of Act XXIV of 1855 :

Sentence of Europeans and Americans to penal servitude.

Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced

Provide as to sentence for term exceeding ten years but not for life.

or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Fractions of terms of punishments.

COMMENT.—A sentence of transportation for life does not necessarily mean as one of not more than twenty years and the convict is not necessarily entitled to remission.¹

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

COMMENT.—This section can no longer be construed as providing only for the transitory detention of prisoners awaiting conveyance to a penal settlement outside India. Acts passed since the Penal Code have effected a radical change in the law relating thereto. A sentence of transportation no longer necessarily involves prisoners being sent overseas or even beyond the provinces wherein they were convicted. A prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India appointed for transportation of prisoners where he will be dealt with in the same manner as a prisoner sentenced to rigorous imprisonment.²

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards,¹ it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years,² and not exceeding the term for which by this Code such offender is liable to imprisonment.

Transportation instead of imprisonment.

COMMENT.—This section only enacts a general rule to the effect that in the case of offences for which no transportation is specially mentioned as a punishment and which are punishable with imprisonment for a term of seven years or upwards, it is competent to the Judge to substitute a sentence of transportation as a substantive sentence for that of imprisonment.³ The term of transportation under this section cannot exceed the term of imprisonment provided by the section under which a conviction is had and cannot be less than seven years.

Ingredients.—The essentials of the section are—

1. The offender must be punishable with imprisonment for *seven* years or upwards in respect of an offence punishable under this Code.

2. The term of transportation awarded in lieu of imprisonment should not be less than *seven* years and should not exceed the term for which imprisonment could be inflicted.⁴

¹ *Kishori Lal*, (1945) 47 Bom. L. R. 625, P.C.

² *Kishori Lal*, *ibid.*

³ *Kunhussa*, (1882) 5 Mad. 28.

⁴ *Arura*, (1903) P. R. No. 31 of 1903.

1. 'Imprisonment for a term of seven years or upwards.'—The punishment for one offence alone must be imprisonment for seven years or upwards. It cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation.¹ A general sentence of transportation for two or more offences, when only one of the punishments awarded is seven years imprisonment, is illegal.²

2. 'Transportation for a term not less than seven years'.—Where an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment. The transportation awarded cannot exceed the imprisonment for which the prisoner might have been sentenced, even though it would have been open to the Court to award a longer period of transportation under the section appropriate to the crime.

Thus, where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, and the Court does not inflict the extreme penalty of transportation for life, it cannot award more than ten years' transportation.³

Transportation cannot be substituted for imprisonment in default of fine. —This section does not authorise the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine.⁴

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

61. [Sentence of forfeiture of property.] Repealed by the Indian Penal Code (Amendment) Act, 1921 (XVI of 1921), s. 4.

62. [Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment.] Repealed by the Indian Penal Code (Amendment) Act, 1921 (XVI of 1921), s. 4.

63. Where no sum is expressed to which a fine may extend, the amount of fine, amount of fine to which the offender is liable is unlimited, but shall not be excessive.

COMMENT.—A fine is fixed with due regard to the circumstances of the case in which it is imposed and the condition in life of the offender.

64. In every case of an offence punishable with imprisonment as well as fine,¹ in which the offender is sentenced to a fine, whether with or without imprisonment,

Sentence of imprisonment for non-payment of fine.

¹ *Mootke Kora*, (1865) 2 W. R. 1; *Salar Bakhsh*, (1901) P. R. No. 27 of 1901.

² *Shonavillah*, (1866) 5 W. R. (Cr.) 44.

³ *Naiada*, (1875) 1 All. 43, F.B.; *Arura*, (1903) P. R. No. 31 of 1903; *Muhammad Sharif*, (1915) P. R. No. 14

of 1915; *Sayyapureddi Chinnayya*, (1920) 48 I. A. 35, 44 Mad. 297, 23 Bom. L. R. 705.

⁴ *Kunhussa*, (1882) 5 Mad. 28; *Nuran*, (1880) P. R. No. 17 of 1880.

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

COMMENT.—The wording of the section is not happy, but the Legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases in which fine can be imposed to induce the offender to pay the fine.

The cases falling under this section are :—

Where the offence is punishable with (a) imprisonment *with* fine, or (b) imprisonment or fine, or (c) fine only, and the offender is sentenced to (i) imprisonment, or (ii) fine, or both, the Court may sentence the offender to a term of imprisonment in default of payment of fine.

1. 'Imprisonment as well as fine'.—The words 'as well as' do not mean here *and* as will be seen from the concluding words of the first clause, viz., 'whether with or without imprisonment.' The words 'imprisonment as well as fine' include (a) offences punishable with imprisonment or fine in the alternative, and (b) offences punishable with imprisonment or fine, or both, cumulatively.¹

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

COMMENT.—This section applies to all cases where the offence is 'punishable with imprisonment as well as fine', i.e., cases where fine and imprisonment can be awarded, and also those where the punishment may be either fine or imprisonment, but not both. The only cases that it does not apply to are those dealt with in s. 67 where fine only can be awarded.²

Section 33 of the Criminal Procedure Code acts as a corollary to this section.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Description of imprisonment for non-payment of fine.

COMMENT.—The imprisonment in default of payment of a fine may be either rigorous or simple.

67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the

Imprisonment for non-payment of fine, when offence punishable with fine only.

¹ *Yakoob Sahib*, (1898) 22 Mad. 238.

² *Ibid.*

following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

COMMENT.—This section refers solely to cases in which the offence is punishable with fine only and has no application to an offence punishable either with imprisonment or with fine, but not with both. Such offences are governed by s. 65.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

COMMENT.—See ss. 386-389 of the Criminal Procedure Code as to the mode in which fine is levied.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

ILLUSTRATION.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

COMMENT.—If the fine imposed on an accused is paid or levied while he is imprisoned for default of payment, his imprisonment will immediately terminate: and if a proportion of the fine be paid during the imprisonment, a proportional abatement of the imprisonment will take place. The Court has, however, no power to refund fine.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

COMMENT.—Imprisonment in default of fine does not liberate the offender from his liability to pay the full amount of fine imposed on him. Such imprison-

ment is not a discharge or satisfaction of the fine but is imposed as a punishment for non-payment of contempt or resistance to the due execution of the sentence. The offender cannot be permitted to choose whether he will suffer in his person or his property. His person will cease to be answerable for the fine. But his property will for a time continue to do so. The bar of six years may save the property of the accused but not his personal arrest. The liability for any sentence of imprisonment awarded in default of payment of fine continues after the expiration of six years.¹ Any proceeding taken after six years to recover fine by sale of immoveable property of the offender is time-barred.² The death of an offender does not discharge any property which would, after his death, be legally liable for his debts from liability to discharge any fine due from him.³

* 71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Limit of punishment of offence made up of several offences.

* Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

ILLUSTRATIONS.

(a) A gives Z fifty strokes with a stick. Here, A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

COMMENT.¹ The section says that where an offence is made up of parts, each of which constitutes an offence, the offender should not be punished for more than one offence unless expressly provided. Where an offence falls within two or more separate definitions of offences; or where several acts of which one or more than one would, by itself or themselves, constitute an offence, constitute when combined a different offence, the offender should not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. The section governs the whole Code and regulates the limit of punishment in cases in which the greater offence is made up of two or more minor offences. It is not a rule of adjective law or procedure, but a rule of substantive law regulating the measure of punishment, and it does not, therefore, affect the question of conviction.

¹ *Ganu Sakharum*, (1884) Unrep. Cr. *Bhikalal*, (1940) 43 Bom. L. R. 122, C. 207. [1941] Bom. 147.

² *Collector of Broach v. Ochhavai* ³ *Sita Ram*, (1937) 18 Luck. 306.

which relates to the province of procedure. The section contemplates separate punishments for an offence against the same law and not under different laws.¹

The rules for assessment of punishment are laid down in ss. 71 and 72 of the Penal Code and s. 35 of the Code of Criminal Procedure. Section 35 of the Code of Criminal Procedure provides that when a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of s. 71 of the Indian Penal Code, sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; and in the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court. It, therefore, enhances the ordinary powers of sentences given to Magistrates by s. 32, Criminal Procedure Code; but in order to bring a case within the purview of this section, the accused must have been convicted of two or more offences in the same trial, and the sentence for any one of these offences should not exceed the limits of their ordinary powers. The limits fixed by this section refer to sentences passed simultaneously, or upon charges which are tried simultaneously. Sentences of imprisonment passed under it may run concurrently. The explanation and illustration added to s. 35 of Act V of 1898 are repealed (Act XVIII of 1923). This sets at rest the conflict of opinion as to what are or what are not "distinct" offences. Separate sentences can be passed in respect of separable offences dealt with under s. 71 of the Penal Code. The distinction between "separable" offences under s. 71 of the Code and "distinct" offences under s. 35 of the Criminal Procedure Code has been done away with.

Section 235 of the Code of Criminal Procedure contains only rules of criminal pleading in regard to joinder of charges, and it does not deal with the sentence to be passed on the charges of the offences mentioned in the several illustrations. It says:

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(3) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one or more, of such acts.

(4) Nothing contained in this section shall affect the Indian Penal Code, s. 71.

Section 71 of the Penal Code and s. 235 of the Criminal Procedure Code.—Reading s. 235 with s. 71 we get a four-fold result which may be stated thus:—

1. A repetition in the same transaction of several criminal acts of exactly the same character may constitute one crime, e.g., a number of blows on one person, a number of lies in one continuous deposition, or a number of articles stolen at one house-breaking. That is a case covered by s. 71 (see ill. (a)). The greater or lesser number of criminal acts may add to or diminish the heinousness of the offence.

¹ *Sukhnandan Rai*, (1917) 19, Cr. L. J. 157.

² *Mahadogir*, (1912) 9 N. L. R. 26, 29, 14 Cr. L. J. 185, 187.

2. A single transaction may give rise to either—

(1) several offences of a different character, each complete in itself and distinct from the other, e.g., criminal breach of trust accompanied by falsification of accounts as a preliminary or a sequel to such breach ; or

(2) several offences of the same character but affecting different persons, e.g., a single gun shot fired with criminal intent which injures two or more persons.

Each such offence is separately indictable and punishable. See sub-s. (1) of s. 235 and ill. (b) to s. 71 and ills. (a), (f) and (g) to s. 235.

Where different persons are injured, grievous hurt being caused in one case and simple hurt in others, it is competent for the Court to impose separate and accumulative sentences.¹ But separate sentences cannot be passed under ss. 323 and 326 in the case of an assault upon a single person.²

3. The same series of acts may constitute different offences. All may be charged, but only one offence may be regarded as committed for the purpose of inflicting punishment, e.g., a person who sets fire to a ware-house. Here his act is an offence under s. 435, and also under s. 436, and, though he may be charged for both, he cannot be punished for more than one of these offences. Only one offence has been committed and the punishment must not exceed that applicable to the graver offence. See cl. 2 of s. 71 and sub-s. (2) of s. 235.

It is a general rule that when, in the same penal statute, there are two clauses applicable to the same act of an accused, the punishments are not to be regarded as cumulative, unless it be so expressly provided.³

4. An act, in itself an offence, may become either an aggravated form of that offence, or a different, offence, when combined with some other acts, innocent or criminal. Here we have a compound offence which, as well as its component minor offence, may be charged under s. 235, sub-s. (3). But if the compound offence is made out, no punishment can be awarded beyond that which can be given in respect of it in virtue of s. 71. For instance, upon the same facts a person may be charged for using criminal force under s. 352 and under s. 152 for the same force against a public servant. But though convicted on both charges, he could not receive a higher punishment than that which is provided by the latter section.

CASES.—1. Several offences constituting one offence.—Where the accused stole property at night belonging to two different persons from the same room of a house;⁴ where the accused stole at the same time two bullocks which belonged to two different owners, and which were tied to the yoke of a cart;⁵ where the accused, a guard in charge of a goods train, stole articles belonging to two different persons from separate bags in a truck,⁶ it was held that the accused could not be convicted and sentenced separately for two distinct offences of theft.

2. Single transaction giving rise to several offences.—An accused was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit the offences of mischief and assault and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each of the offences. These offences formed part of one transaction. It was held that the sentences were legal.⁷ An accused who threatened three witnesses was convicted and sentenced to four

¹ *Bateshar*, (1915) 37 All. 628; *Pira*, (1925) 27 Cr. L. J. 818, 27 P. L. R. 347.

² *Devi Sahai*, (1927) 28 Cr. L. J. 662.

³ Per West, J., in *Dod Basaya*, (1874) 11 B. H. C. 13, 15.

⁴ *Sheikh Moneeah*, (1869) 11 W. R.

(Cr.). 38.

⁵ *Krishna Shahaji*, (1897) Unrep. Cr. C. 927.

⁶ *Har Dial*, (1905) P. R. No. 58 of 1905.

⁷ *Nirchan*, (1888) 12 Mad. 86.

months' imprisonment for threat to each witness. It was held that if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him he may be convicted for an offence as against each person, and be punished separately for each offence.¹ Where the accused stole a bullock from the jungle, where it was put to graze by its master, a cartman, and then killed it for food and was convicted of the offences of theft and mischief at one trial and was sentenced separately for each offence, it was held that the sentences were legal. Theft and mischief are two distinct offences covered by two separate definitions and punishable separately as such.²

Rioting and grievous hurt.—The question as to whether a member of an unlawful assembly, some members of which have caused grievous hurt, can be punished for the offence of rioting, as well as for the offence of causing grievous hurt, has led to a divergence of opinion between the High Courts of Bombay and Allahabad³ and the former Chief Court of the Punjab on the one side, and the High Court of Calcutta on the other.

All the High Courts are unanimous on the point that where an accused is guilty of riot and has also by his own hands caused grievous hurt, separate sentences may be passed for each of the two offences without regard to the limit of the combined sentences. In such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences.⁴

But where the accused is convicted of rioting and of hurt which he has not himself committed but for which he is liable under s. 149, there is a difference of opinion.

A full bench of the Calcutta High Court has ruled that separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code.⁴

The Madras and Patna High Courts have adopted the same view.⁵ The former Chief Court of the Punjab has also held likewise.⁶

A full bench of the Bombay High Court has decided that where an accused is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s. 149 of the Penal Code, it is not illegal to pass two sentences one for riot, and one for hurt: provided the total punishment does not exceed the maximum which the Court might pass for any one of the offences.⁷ The Allahabad and Rangoon High Courts have followed the Bombay view.⁸ The Bombay view will, however, require reconsideration as the Privy Council has now definitely laid down that s. 149 creates a specific offence.⁹

3. Same facts constituting different offences.—An accused cannot be punish-

¹ *Goolzar Khan*, (1868) 9 W. R. (Cr.) 30.

² *Paw Din*, [1888] Ran. 63.

³ *Bana Punja*, (1892) 17 Bom. 260, F.B.; *Ferasat*, (1891) 19 Cal. 105; *Pershad*, (1885) 7 All. 414, F.B.; judgments of Oldfield and Duthoit, JJ., in *Ram Sarup*, (1885) 7 All. 757, F.B.; *Sothavalan v. Rama Kone*, (1932) 56 Mad. 481.

⁴ *Nilmomy Poddar*, (1889) 10 Cal. 442, F.B., overruling *Loke Nath Sarkar*, (1885) 11 Cal. 849; *Keamuddi Karjkar*, (1927) 51 Cal. 79.

⁵ *Ponniiah Lopes*, (1933) 57 Mad. 648; *Pattu Singh*, (1918) 3 P. L. J. 641.

⁶ *Bhagwan Singh*, (1900) P. R. No. 4 of 1901, F.B.; *Mangal Singh*, (1916) P. R. No. 31 of 1916.

⁷ *Bana Punja*, (1892) 17 Bom. 260, F.B.

⁸ *Chhidda*, (1925) 24 A. L. J. R. 178; *Bisheshar*, (1887) 9 All. 645, 650; *Wazir Jan*, (1887) 10 All. 58. Contra, *Ram Partab*, (1883) 6 All. 121; *Nga Son Min*, (1923) 3 B. L. J. 49.

⁹ *Barendra Kumar Ghosh*, (1924) 52 I. A. 40, 52 Cal. 197, 27 Bom. L. R. 148.

ed at the same time for committing an offence by fire with intent to destroy a warehouse (s. 486) and for the offence of mischief by fire (s. 485).¹ Where a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, it was held that she could not be convicted and punished under s. 304 and also under s. 317 but under s. 304 only.² A person cannot be punished for rioting and also for being a member of an unlawful assembly;³ for rioting and for wrongful confinement, when the common object of the unlawful assembly is wrongful confinement;⁴ for culpable homicide and for being a member of an unlawful assembly armed with a deadly weapon;⁵ for dishonestly receiving stolen property (s. 411) and for assisting in the concealment of stolen property (s. 414);⁶ for abducting a child with intent dishonestly to take moveable property, and also for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction.⁷

4. An act giving rise to an offence and an aggravated form of the same offence.—A full bench of the Bombay High Court has held :—

“(1) that a person who has committed house-breaking in order to commit theft (s. 457) and theft (s. 380) can be charged with, and convicted of, each of these offences;

(2) that a Court in awarding punishment (under s. 71) should pass one sentence for either of the offences in question, and not a separate one for each offence;

(3) that if two sentences are nevertheless passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences or the jurisdiction of the Court, that would be an *irregularity* only and not an *illegality*.⁸

Owing to the repeal of the Explanation and the illustration added to s. 35 of the Code of 1898, it is submitted that points (2) and (3) of the above full bench ruling are rendered obsolete, and separate sentences can now be passed for each of the offences.

The Calcutta High Court has considered the effect of the amendment of s. 35, Criminal Procedure Code, and has held that where a person is convicted at one trial of the offence of house-breaking with intent to commit theft (s. 457) and of the commission of theft after such house-breaking (s. 380) he can be sentenced to separate sentences in respect of each of those offences.⁹ The Chief Court of Oudh has taken the same view.¹⁰

The Patna High Court has in a case followed the earlier decisions of the Calcutta High Court which are now obsolete, and has not considered the effect of the amendment of s. 35.¹¹

The Allahabad High Court held in a case where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, that he could not receive a punishment more severe than might have been awarded for either of such offences.¹² In another case the accused were tried for offence under ss. 170 and 383, committed in the same

¹ *Dod Basaya*, (1874) 11 B. H. C. 13,

15.

² *Banni*, (1879) 2 All. 349.

³ *Meelan Khalifa v. Dwarkanath Goopio*, (1864) 1 W. R. (Cr.) 7.

⁴ *Alim Sheikh v. Shahazada Singh Burkundaz*, (1904) 8 C. W. N. 483.

⁵ *Rubbeoolah*, (1867) 7 W. R. 13.

⁶ (1868) 4 M. H. C. (Appx.) 18.

⁷ *Nowjan*, (1874) 7 M. H. C. 375.

⁸ *Malu Arjun*, (1899) 1 Bom. L. R. 142, 23 Bom. 706, F.B., followed in *Wadhawa*, (1917) P. R. No. 46 of 1917.

⁹ *Kanchan Molla*, (1925) 41 C. L. J. 503, 565.

¹⁰ *Sital*, (1941) 17 Luck. 518.

¹¹ *Makhru Dusadh*, (1926) 5 Pat. 464.

¹² *Budh Singh*, (1879) 2 All. 101.

transaction, and it appeared that but for personating a public servant the accused would not have been in a position to commit the act of extortion. It was held that the former offence was completed before the latter had begun, and the separate sentence for each offence was not illegal.¹ These decisions are no longer of any authority in view of the amended s. 35 of the Criminal Procedure Code.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

* Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

COMMENT.—This provision is intended to prevent an offender whose guilt is fully established from eluding punishment on the ground that the evidence does not enable the tribunal to pronounce with certainty under what penal provision his case falls. The section applies to cases in which the law applicable to a certain set of facts is doubtful. The doubt must be as to which of the offences the accused has committed, not whether he has committed either.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion¹ or portions of the imprisonment to which he is sentenced, not exceeding three months² in the whole, according to the following scale, that is to say—

Solitary confinement.

a time not exceeding one month if the term of imprisonment shall not exceed six months :

a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year :

a time not exceeding three months if the term of imprisonment shall exceed one year.

COMMENT.—Solitary confinement amounts to keeping the prisoner thoroughly isolated from any kind of intercourse with the outside world. It is inflicted in order that a feeling of loneliness may produce wholesome influence and reform the criminal. This section gives the scale according to which solitary confinement may be inflicted.

In England solitary punishment has been done away with.

1. 'Any portion'.—These words imply that the solitary confinement if inflicted for the whole term of imprisonment is illegal.³

2. 'Not exceeding three months'.—In the case of simultaneous convictions, the award of separate terms of solitary confinement, which in the aggregate exceed three months, is illegal;³ but, as a matter of practice, a sentence of more than three months' solitary confinement is not passed on a person convicted at one trial of

¹ *Wazir Jan*, (1887) 10 All. 58.

L. R. 40.

² *Nyan Suk Mether*, (1869) 3 Beng.

³ *Nihala*, (1877) P. R. No. 11 of 1877.

more offences than one.¹ Cumulative sentences of solitary confinement are contrary to the intention of this section.²

Solitary confinement or imprisonment in lieu of fine.—Where imprisonment is not part of the substantive sentence, solitary confinement cannot be awarded;³ so also it cannot be awarded as part of the imprisonment in lieu of fine.⁴

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

COMMENT.—Solitary confinement if continued for a long time is sure to produce mental derangement.

The section limits the solitary confinement, when the substantive sentence exceeds three months, to seven days in any one month. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than fourteen days is awarded.⁵

75. Whoever, having been convicted,¹—

(a) by a Court in British India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

(b) by a Court or tribunal in any Indian State acting under the general or special authority of the Central Government or of the Crown Representative, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

COMMENT.—This section enables the Courts in British India to recognize previous convictions by Courts in Indian States which exercise their jurisdiction under the general or special authority of the Central Government or of the Crown Representative.

Principle.—This section does not constitute a separate offence, but only imposes a liability to enhanced punishment.

¹ Ibrahim, (1897) P. R. No. 7 of 1899.

1897; Abdulla Jan, (1905) P. R. No. 37 of 1905.

⁴ Jita, (1878) P. R. No. 28 of 1878.

² Nga Sein Po, (1923) 1 Ran. 306.

³ Nyan Suk Mether, (1899) 8 Ben. L. R. 40.

⁵ Umr Singh, (1869) P. R. No. 20

The meaning of the section is, that when an offender having been convicted—

(a) by a Court in British India, or

(b) by a Court in the territory of an Indian State acting under the authority of the Central Government or the Crown Representative, for an offence under Chapter XII (offences relating to coin and Government stamp) or Chapter XVII (offences against property) of the Code, punishable with three years' imprisonment, commits an offence of a similar description after his release from prison, he is liable to increased punishment, on the ground that the punishment undergone has had no effect in preventing a repetition of the crime.

To bring an offence within the terms of this section three conditions must be fulfilled:—

(1) The offence must be one under either Chapter XII or XVII of the Code.

(2) The previous convictions must have been for an offence therein punishable with imprisonment for not less than three years.

(3) The subsequent offence must also be punishable with imprisonment for not less than three years.

1. 'Having been convicted.'—The section declares that if any person, *having been convicted* of any offence punishable under certain chapters, shall be guilty of any offence punishable under those chapters, he shall for every such subsequent offence be liable to the penalties therein declared. Where, therefore, a person committed an offence punishable under Chapter XII or XVII with imprisonment of three years, and *previously to his being convicted* of such offence, committed another such offence, it was held that he was not subject, on being convicted of the second offence, to the enhanced punishment provided by this section.¹ Similarly the section is not applicable where offences are committed at one and the same time;² because it postulates the commission of the offence which forms the subject of the subsequent charge at a period subsequent to the date of the offence of which the accused was before convicted. The accused cannot be charged with a conviction for an offence committed subsequent to the date of the offence for which he is on his trial.³

The section is not intended to impose a heavy sentence for a trivial offence⁴ even in the case of an old offender.

Clause (a).—The previous conviction should be by "a Court in British India." Such a conviction outside British India, *e.g.*, in the Police Courts at Colombo in Ceylon, cannot be made the basis of a charge under this section.⁵ The offence should not only be an offence under Chapter XII or Chapter XVII but it should also be punishable with imprisonment for a term of three years or upwards.⁶ It is not necessary that the punishment actually awarded for the first offence should have been imprisonment for three years. But both the previous and subsequent offences shall be offences of the class punishable with imprisonment for a term of three years or upwards.⁷

Clause (b).—Under this clause the Court or tribunal in the territory of an Indian State must be acting under the general or special authority of the Central Government or the Crown Representative. Conviction by a Court in an Indian State which

¹ *Megha*, (1878) 1 All. 687; *Sakya* 450.

Kavji, (1868) 5 B. H. C. (Cr. C.) 36;

Sayad Abdul, (1926) 28 Bom. L. R. 484.

² *Jhoomuck Chamar*, (1866) 6 W. R. (Cr.) 90.

³ *Sayad Abdul*, (1926) 28 Bom. L. R.

484; *Chuttal Imam Bakhsh*, [1941] Kar.

⁴ *Mauku*, (1929) 11 Lah. 115.

⁵ *Crown Prosecutor v. Muthusamy*, (1934) 58 Mad. 707.

⁶ *Chandaria*, (1911) P. L. R. No. 235 of 1911.

⁷ (1874) 1 Weir 88.

is not under such authority cannot, therefore, be taken into consideration in enhancing punishment under this section.¹

Attempt.—This section does not apply to cases of attempts not specially made offences in Chapters XII and XVII of the Code;² nor to cases of offences which fall under s. 511 of the Code.³

Abetment.—The previous conviction of an accused for an offence under chapters XII and XVII cannot be taken into consideration at a subsequent conviction for abetment of an offence under those chapters for the purpose of enhancing punishment under this section.⁴

CHAPTER IV.

GENERAL EXCEPTIONS.

This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

The word 'offence' in this Chapter denotes a thing punishable under the Code or under any special or local law (s. 40).

The following acts are exempted under the Code from criminal liability :—

1. Act of a person bound by law to do a certain thing (s. 76).
2. Act of a Judge acting judicially (s. 77).
3. Act done pursuant to an order or a judgment of a Court (s. 78).
4. Act of a person justified, or believing himself justified, by law (s. 79).
5. Act caused by accident (s. 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (s. 81).
7. Act of a child under 7 years.
8. Act of a child above 7 and under 12 years, but of immature understanding (s. 83).
9. Act of a person of unsound mind (s. 84).
10. Act of an intoxicated person (s. 85).
11. Act not known to be likely to cause death of grievous hurt done by consent of the sufferer (s. 87).
12. Act not intended to cause death done by consent of sufferer (s. 88).
13. Act done in good faith for the benefit of a child or an insane person by or by the consent of guardian (s. 89).
14. Act done in good faith for the benefit of a person without consent (s. 92).
15. Communication made in good faith to a person for his benefit (s. 93).
16. Act done under threat of death (s. 94).
17. Act causing slight harm (s. 95).
18. Act done in private defence (ss. 96-106).

The above exceptions, strictly speaking, come within the following seven categories :—

1. Judicial acts (ss. 77, 78).
2. Mistake of fact (ss. 76, 79).
3. Accident (s. 80).
4. Absence of criminal intent (ss. 81-86, 92-94).
5. Consent (ss. 87-90).
6. Trifling acts (s. 95).
7. Private defence (ss. 96-106).

¹ *Bhanwar*, (1919) 42 All. 136; *Bahawal*, (1913) P. R. No. 17 of 1913 (Cr.).

² *Nana Rahim*, (1880) 5 Bom. 140; *Ram Dayal*, (1881) 8 All. 778; *Sricharan Bawrt*, (1887) 14 Cal. 357; *Harnam*, (1907) P. R. No. 17 of 1907.

³ *Bharosa*, (1895) 17 All. 123; *Ajudhia*, (1898) 17 All. 120; *Jhannan Lal*, (1906) P. R. No. 14 of 1906; *Ghasia*, (1918) P. R. No. 18 of 1919; *Chhedi*, [1942] All. 389.

⁴ *Kashia Akloo*, (1907) 19 Bom. L. R. 26.

Onus of proving exception lies on accused.—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or any law defining the offence, is upon him; and the Court shall presume the absence of such circumstances.¹

Although the law lays down that the onus of proving circumstances which give the benefit of a general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused, this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to its satisfaction that the accused comes within the exception.²

76. Nothing is an offence which is done by a person who is, or who
Act done by a person bound, or by mistake of fact believing himself bound, by law. by reason of a mistake of fact¹ and not by reason of a mistake of law² in good faith believes himself to be, bound by law³ to do it.

ILLUSTRATIONS.

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y. and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

COMMENT.—This section excuses a person who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it. See Comment on s. 79 *infra*.⁴

This section and sections 77, 78, and 79 deal with acts of a person bound or justified by law. This section as well as sections 78 and 79 deal with acts of a person under a mistake.

1. 'Mistake of fact.'—See Comment under s. 79, *infra*.

2. 'Mistake of law.'—See Comment under s. 79, *infra*.

3. 'In good faith believes himself to be, bound by law.'—In order to entitle a person to claim the benefit of this section it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the latter expression with reference to s. 52, that the person to whom the order was given was bound by law to obey it. Thus, in the case of a soldier, the Penal Code does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act. But in certain circumstances a soldier receives absolute protection under s. 132 of the Code of Criminal Procedure.

For illegal acts, however, neither the orders of a parent nor a master nor a superior will furnish any defence. Nothing but fear of instant death is a defence for a policeman who tortures anyone by order of a superior. The maxim *respondent superior* has no application to such a case.⁵ Obedience to an illegal order can only be used

¹ The Indian Evidence Act, I of 1872, s. 105.

² *Musammat Anamti*, (1923) 45 All.

³ I. P. C.

⁴ *Latifkhan*, (1895) 20 Bom. 394;

⁵ *Gurdit Singh*, (1883) P. R. No. 16 of 1883.

in mitigation of punishment but cannot be used as a complete defence.¹

Liability of private persons to assist police.—Private persons who are bound to assist the police under s. 42 of the Code of Criminal Procedure will be protected under this section.

CASES.—A police-officer came to Bombay from up-country with a warrant to arrest a person. After reasonable inquiries and on well-founded suspicion he arrested the complainant under the warrant, believing in good faith that he was the person to be arrested. The complainant having proceeded against the police-officer for wrongful confinement, it was held that the police-officer was guilty of no offence as he was protected by this section.²

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act of Judge when acting judicially.

COMMENT.—Under this section a Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives to him, but also in cases where he, in good faith, exceeds his jurisdiction and has no lawful powers. It protects Judges from criminal process just as the Judicial Officers Protection Act, 1850, saves them from civil suits.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of Court.

COMMENT.—This section is merely a corollary to s. 77. It affords protection to officers acting under the authority of a judgment, or order of a Court of Justice. It differs from s. 77 on the question of jurisdiction. Here, the officer is protected in carrying out an order of a Court which may have no jurisdiction at all, if he believed that the Court had jurisdiction; whereas under s. 77 the Judge must be acting within his jurisdiction to be protected by it.

Mistake of law can be pleaded as a defence under this section.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact¹ and not by reason of a mistake of law² in good faith, believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

ILLUSTRATION.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z be-

¹ *Chaman Lal*, [1940] Lah. 522.

² *Gopalia Kallaiya*, (1923) 26 Bom. L. R. 138.

fore the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

COMMENT.—Distinction between ss. 76 and 79.—The distinction between s. 76 and this section is that in the former a person is assumed to be bound, and in the latter to be justified by law, in other words, the distinction is between a real or supposed legal obligation and a real or supposed legal justification, in doing the particular act. Under both (these sections) there must be a *bona fide* intention to advance the law, manifested by the circumstances attending the act which is the subject of charge; and the party accused cannot allege generally that he had a good motive, but must allege specially that he believed in good faith that he was bound by law (s. 76) to do as he did, or that being empowered by law (s. 79) to act in the matter, he had acted to the best of his judgment exerted in good faith.¹

1. 'Mistake of fact.'—'Mistake' is not mere forgetfulness.² It is a slip "made, not by design, but by mischance."³ Under ss. 76 and 79 a mistake must be one of fact and not of law. At common law an honest and reasonable belief in the existence of circumstances, which if true, would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy.⁴ It may be laid down as a general rule that an alleged offender is deemed to have acted under that state of facts which he in good faith and on reasonable grounds believed to exist when he did the act alleged to be an offence.⁵ *Ignorantia facti* doth excuse, for such an ignorance many times makes the act itself morally involuntary.⁶ Similarly, where a man made a thrust with a sword at a place where, upon reasonable grounds, he supposed a burglar to be, and killed a person who was not a burglar, it was held that he had committed no offence.⁷ In other words, he was in the same situation as far as regarded the homicide as if he had killed a burglar. But where an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits the act, then according to the *ratio decidendi* in *Prinec's* case⁸ he will be guilty of a criminal offence.

2. 'Mistake of law.'—Mistake in point of law in a criminal case is no defence. "Ignorance of the municipal law of the kingdom, or of the penalty thereby inflicted upon offenders, doth not excuse any, that is of the age of discretion and *compos mentis*, from the penalty of the breach of it; because every person of the age of discretion and *compos mentis* is bound to know the law, and presumed so to do."⁹ If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a Court of Justice that he was ignorant of the law of the land, and no Court of Justice is at liberty to receive such a plea."¹⁰

The maxim *ignorantia juris non excusat*, in its application to criminal offences, admits of no exception, not even in the case of a foreigner who cannot reasonably be supposed in fact to know the law of the land.¹¹ In a case two Frenchmen were

¹ 1st Rep., s. 114, p. 219.

² Per Lord Esher, M. R., in *Barrow v. Isaacs*, [1891] 1 Q. B. 417, 420.

³ Per Lord Russell, C. J., in *Sandford v. Beal*, (1895) 65 L. J. Q. B. 73, 74.

⁴ Per Cave, J., in *Tolson*, (1889) 23 Q. B. D. 168, 181.

⁵ Per Stephens, J., *ibid.*, p. 188.

⁶ 1 Hale P. C., pp. 42, 43.

⁷ *Levett*, (1839) Cro. Car. 588.

⁸ (1875) L. R. 2 C. C. R. 154. See *Tolson*, (1889) 23 Q. B. D. 168.

⁹ 1 Hale P. C. 42.

¹⁰ *Fischer*, (1891) 14 Mad. 342, 354.

¹¹ *Esop*, (1836) 7 C. & P. 456.

charged with wilful murder because they had acted as seconds in a duel in which one man had met his death. They alleged that they were ignorant of the fact that by the law of England killing an adversary in a fair-duel amounts to murder. But the plea was overruled.¹

Ignorance of statute newly passed.—Although a person commits an act which is made an offence for the first time by a statute so recently passed as to render it impossible that any notice of the passing of the statute could have reached the place where the offence has been committed, yet his ignorance of the statute will not save him from punishment.²

Act of State.—An act of State is an act injurious to the person or to the property of some person who is not at the time of that act a subject of His Majesty ; which act is done by any representative of His Majesty's authority, civil or military, and is either previously sanctioned or subsequently ratified by His Majesty. The doctrine as to acts of State can apply only to acts which affect foreigners, and which are done by the orders or with the ratification of the sovereign. As between the sovereign and his subjects there can be no such thing as an act of State. Courts of law are established for the express purpose of limiting public authority in its conduct towards individuals. If one British subject puts another to death or destroys his property by the express command of the King, that command is no protection to the person who executes it unless it is in itself lawful, and it is the duty of the proper Courts of Justice to determine whether it is lawful or not. But as between British subjects and foreigners, the orders of the Crown justify what they command so far as British Courts of Justice are concerned.³

Persons carrying out an act of State under proper orders will be protected by the Penal Code, in the same way as if they were carrying out a lawful order under the municipal law. To support a plea of this nature two things are essential:—

(1) that the defendant had authority to act on behalf of the Crown in the matter; and

(2) that in so acting, he was professing to act as a matter of policy, outside the law, and not as a matter of right within the law.

Liability of private persons.—Private persons acting under ss. 43, 59, 77 and 78 of the Code of Criminal Procedure will be protected under this section.

CASES.—Mistake of fact.—GOOD DEFENCE.—The accused, a police constable, saw the complainant early one morning, carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen, he went up to the complainant and questioned him.⁴ The complainant gave answers that were not satisfactory and refused to allow the constable to inspect the cloth and a scuffle thereupon ensued between the two. The complainant was arrested by the constable, but was released by the Inspector of Police. The complainant then prosecuted the constable for wrongful restraint and confinement, and the Magistrate convicted the constable of the said offence. The High Court held that the conviction was wrongful as the constable acted under a *bona fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant to clear up his suspicions was an indication of good faith, and he was, therefore, protected by this section.⁴

¹ *Barrenel*, (1852) Dearsly 51.

Law of England, Vol. II, pp. 61, 65.

² *Bailey's Case*, (1800) Russ. & Ry. 1.

⁴ *Bhawoo Jivaji v. Mulji Doshi*,

³ *Stephen's History of the Criminal*

(1888) 12 Bom. 377.

English case.—The accused was convicted of bigamy, having gone through the ceremony of marriage within seven years after she had been deserted by her husband. She believed in good faith and on reasonable grounds that her husband was dead.¹ It was held that a *bona fide* belief on reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence to the indictment, and that the conviction was wrong.¹

BAD DEFENCE.—A police-officer saw a horse tied up in B's premises and because it happened to resemble one which his father had lost a short time previously, he jumped at once to the conclusion that B had either stolen the horse himself, or had purchased it from the thief, and compelled B to account for his possession. The officer found that B had bought the animal from one S; so he sent for S, charged him with the theft, and compelled him to give bail whilst an investigation was pending. The officer never sent for the supposed owner of the horse, or took the trouble of getting any credible information as to whether it was his father's horse or not. It was held that the police-officer had not acted in good faith, that is, with due care and attention, and that this section did not protect him.²

English case.—The accused took an unmarried girl under the age of sixteen years out of the possession, and against the will, of her father. The defence of the accused was that he *bona fide* and reasonably believed that the girl was older than sixteen. It was held that as the taking of the girl was unlawful the defence was bad.³ This case may be distinguished from *Tolson's* case, in which a woman married believing her husband to be dead. There the conduct of the woman was not in the smallest degree immoral, but was, on the other hand, perfectly natural and legitimate.

80. Nothing is an offence which is done by accident¹ or misfortune, and without any criminal intention or knowledge,² in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Accident in doing a lawful act.

ILLUSTRATION.

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

COMMENT.—This section exempts the doer of an innocent or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may ensue from accident or misfortune.

1. 'Accident.'—An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.⁴ An accident is something that happens out of the ordinary course of things.⁵ The idea of something fortuitous and unexpected is involved in the word 'accident.'⁶

An injury is said to be accidentally caused whensoever it is neither wilfully nor negligently caused.⁷

¹ *Tolson*, (1889) 23 Q. B. D. 168.

² *Sheo Surun Sahai v. Mahomed Fazil Khan*, (1888) 10 W. R. (Cr.) 20.

³ *Prince*, (1875) L. R. 2 C. C. R. 154.
Stephen's Digest of Crim. Law, Art. 281.

⁴ *Fenwick v. Schmalz*, (1868) L. R. 3 C. P. 313, 316.

⁵ Per Lord Halsbury in *Hamilton, Fraser & Co. v. Pandorf & Co.*, (1887) 12 App. Cas. 518, 524.

⁷ 10th Parl. Rep. 16.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention¹ to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.²

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

ILLUSTRATIONS.

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

COMMENT.—An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided.³

1. 'Without any criminal intention.'—Under no circumstances can a person be justified in intentionally causing harm; but if he causes the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property.

'Criminal intention' simply means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. The motive for an act is not a sufficient test to determine its criminal character. By a motive is meant anything that can contribute to give birth to, or even to prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive be pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

¹ Stephen's Digest of Crim. Law, Art. 83.

Where an offence depends upon proof of intention the Court must have proof of facts sufficient to justify it in coming to the conclusion that the intention existed. No doubt one has usually to infer intention from conduct, and one matter that has to be taken into account is the probable effect of the conduct. But that is never conclusive.¹

Mens rea.—It is one of the principles of the English criminal law that a crime is not committed if the mind of the person doing the act in question be innocent. It is said that *actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute the crime). The maxim has not so wide an application as it is sometimes considered to have. It has undergone a modification owing to the greater precision of modern statutes. It is impossible to apply it generally to all statutes, and the substance of all the reported cases is that it is necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offence created. Crimes are at the present day much more accurately defined by statute or otherwise than they formerly were.

It is, however, held that *mens rea* is an essential ingredient in every offence except in three cases :

- (1) cases not criminal in any real sense but which in the public interest are prohibited under a penalty ;
- (2) public nuisances; and
- (3) cases criminal in form but which are really only a summary mode of enforcing a civil right.

The maxim *actus non facit reum, nisi mens sit rea* has, however, no application to the offences under the Penal Code, as the definitions of various offences contain expressly a proposition as to the state of mind of the accused. The definitions state whether the act must have been done 'voluntarily,' 'knowingly,' 'dishonestly,' or 'fraudulently' or the like. Every ingredient of the offence is stated in the definitions.

2. 'Preventing...harm to person or property.'—This is the case in which evil is done to prevent a greater evil. It is to this ground of justification that we must refer the extreme measures which may become necessary on occasions of contagious diseases, sieges, families, tempests, or shipwrecks.

Doctrine of self-preservation.—The authors of the Code remark :—

"We long considered whether it would be advisable to except from the operation of the penal clauses of the Code acts committed in good faith from the desire of self-preservation ; and we have determined not to except them.

"We admit, indeed, that many acts falling under the definition of offences ought not to be punished when committed from the desire of self-preservation ; and for this reason, that, as the Penal Code itself appeals solely to the fears of men, it never can furnish them with motives for braving dangers greater than the dangers with which it threatens them. Its utmost severity will be inefficacious for the purpose of preventing the mass of mankind from yielding to a certain amount of temptation. It can, indeed, make those who have yielded to the temptation miserable afterwards. But misery which has no tendency to prevent crime is so much clear evil. It is vain to rely on the dread of a remote and contingent evil as sufficient to overcome the dread of instant death, or the sense of actual torture. An eminently virtuous man indeed will prefer death to crime ; but it is not to our virtue that the penal law addresses itself ; nor would the world stand in need of penal laws if men were virtuous.

¹ *Ramchandra Gujar*, (1937) 39 Bom. L. R. 1184, [1938] Bom. 114.

A man who refuses to commit a bad action, when he sees preparations made for killing or torturing him unless he complies, is a man who does not require the fear of punishment to restrain him. A man, on the other hand, who is withheld from committing crime solely or chiefly by the fear of punishment, will never be withheld by that fear when a pistol is held to his forehead or a lighted torch applied to his fingers for the purpose of forcing him to commit a crime...

"Nothing is more usual than for pirates, gang-robbers and rioters to excuse their crimes by declaring that they were in dread of their associates, and durst not act otherwise. Nor is it by any means improbable that this may often be true. Nay, it is not improbable that crews of pirates and gangs of robbers may have committed crimes which every one among them was unwilling to commit, under the influence of mutual fear; but we think it clear that this circumstance ought —not to exempt them from the full severity of the law.

"Again, nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that, when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not keep him from committing theft; yet it by no means follows that it is irrational to punish him for theft; for though the fear of punishment is not likely to keep any man from theft when he is actually starving, it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft; but it is of great effect to counteract the motives to that indolence and that profusion which end in bringing a man into a condition in which no law will keep him from committing theft. We can hardly conceive a law more injurious to society than one which should provide that as soon as a man who had neglected his work, or who had squandered his wages in stimulating drugs, or gambled them away, had been thirty-six hours without food, and felt the sharp impulse of hunger, he might, with impunity, steal food from his neighbours."¹

But in their First Report the Commissioners say: "We think a distinction may be drawn between cases in which a man does a thing which is an offence by law spontaneously, to save his own life, and cases in which he does such a thing, from, what is called duress, that is from the compulsion of others to save his life threatened by them.

"With respect to the former, we agree with the authors of the Code that it is impossible to define precisely those cases in which it may be proper to excuse the parties, and that it is expedient to leave them to the discretion of the Government."² They then proposed s. 94 to meet the latter kind of cases.

As to the doctrine of compulsion and necessity, see Comment on s. 94, *infra*.

CASES.—Where a Chief Constable not in his uniform came to a fire and wished to force his way past the military sentries placed round it, was kicked by a sentry, it was held that as the sentry did not know who he was, the kick was justifiable for the purpose of preventing much greater harm under this section and as a means of acting up to the military order.³ A person placed poison in his toddy pots, knowing that if taken by a human being it would cause injury, but with the intention of thereby detecting an unknown thief who was in the habit of stealing the

¹ Note B, pp. 111, 112.

² Sections 167, 168.

³ *Boslan*, (1892) 17 Bom. 626.

toddy from his pots. The toddy was drunk by and caused injury to some soldiers who purchased it from an unknown vendor. It was held that the person was guilty under s. 828, and that this section did not apply.¹ Where a Village Magistrate arrested a drunken person whose conduct was at the time a grave danger to the public, it was held that he was not guilty of an offence, by reason of the provisions of this section or ss. 96 to 105.²

English cases.—A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life. At the trial of an indictment for murder it appeared that the prisoners D and S, seamen, and the deceased, a boy between seventeen and eighteen, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean and was probably more than 1,000 miles from land; that on the eighteenth day, when they had been seven days without food and five without water, D proposed to S that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy than their lives should be saved; that on the twentieth day, D, with the assent of S, killed the boy, and both D and S fed on his flesh for four days; that at the time of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation. It was held that upon these facts there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder.³ A and B, swimming in the sea after shipwreck, get hold of a plank not large enough to support both: A pushes off B, who is drowned. This, in the opinion of Sir James Stephen, is not a crime as A thereby does B no direct bodily harm but leaves him to his chance of getting another plank.

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

COMMENT.—Under the age of seven years no infant can be guilty of a crime; for, under that age an infant is, by presumption of law, *doli incapax*, and cannot be endowed with any discretion.⁴ If the accused were a child under seven years of age, the proof of that fact would be *ipso facto* an answer to the prosecution.⁵

The accused purchased for one anna, from a child aged six years, two pieces of cloth valued at fifteen annas, which the child had taken from the house of a third person. It was held that, assuming that a charge of an offence of dishonest reception of property (s. 141) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation if he knew that the property belonged to the child's guardians and dishonestly appropriated it to his own use.⁶

Act of a child above seven and under twelve of immature understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of under-

¹ *Dhania Daji*, (1868) 5 B. H. C. (Cr. C.) 59.

² *Gopal Naidu*, (1922) 46 Mad. 605, F.B.

³ *Dudley*, (1884) 14 Q. B. D. 273.

⁴ 1 Hale P. C. 27, 28.

⁵ *Lukhimi Agradamini*, (1874) 22 W. R. (Cr.) 27.

⁶ *Makhulshah*, (1886) 1 Weir 470.

standing to judge of the nature and consequences of his conduct on that occasion.

COMMENT.—Where the accused is above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct, and such non-attainment would have apparently to be specially pleaded and proved, like the incapacity of a person who, at the time of doing an act charged as an offence, was alleged to have been of unsound mind. The Legislature is manifestly referring in this section to an exceptional immaturity of intellect.¹ The circumstances of a case may disclose such a degree of malice as to justify the maxim *malitia supplet aetatem*.²

English law.—According to the English law an infant between the age of seven and fourteen years is presumed to be *doli incapax*. If a child more than seven and under fourteen years of age is indicted for felony it will be left to the jury to say whether the offence was committed by the accused, and, if so, whether at the time of the offence the accused had a guilty knowledge that he was doing wrong.³

An infant above fourteen and under twenty-one is subject to all kinds of punishments: for it is *presumptio juris* that after fourteen years infants are *doli capaces* and can discern between good and evil.⁴

Case.—Theft by child.—Where a child of nine years of age stole a necklace, worth Rs. 2-8-0, and immediately afterwards sold it to the accused for five annas, the child was discharged under this section, but the accused was convicted of receiving stolen property, because the act of the child showed that he had attained a sufficient maturity of understanding to judge of the nature and consequences of his conduct, and therefore it amounted to theft.⁵

84. Nothing is an offence which is done by a person who, at the time of doing it,¹ by reason of unsoundness of mind,² is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.³

COMMENT.—This section lays down the legal test of responsibility in cases of alleged unsoundness of mind. Under it a person is exonerated from liability of doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing,

- (1) the nature of the act, or
- (2) that he is doing what is either wrong or contrary to law.

The accused is protected not only when, on account of insanity, he was incapable of knowing the nature of the act, but also when he did not know either that the act was wrong or that it was contrary to law, although he might know the nature of the act itself. He is, however, not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what he was doing was contrary to law even though he did not know that it was wrong.⁴

The onus of proving unsoundness of mind is on the accused. It may be discharged by producing evidence as to the conduct of the accused shortly prior to the offence

¹ *Lukhimi Agradunini*, (1874) 22 W. R. (Cr.) 27, 28.

² *Owen*, (1830) 4 C. & P. 236.

³ 1 Hale P. C. 26.

⁴ *Mussamul Amona*, (1864) 1 W. R. (Cr.) 43.

⁵ *Krishna*, (1888) 6 Mad. 378.

⁶ *Geron*, [1940] 2 Cal. 329.

and his conduct at the time or immediately afterwards, also by evidence of his mental condition, his family history and so forth.¹

There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind): (1) an idiot; (2) one made *non compos* by sickness; (3) a lunatic or a madman; and (4) one that is drunk.

(1) An idiot is one who is of non-sane memory from his birth, by a perpetual infirmity, without lucid intervals: and those are said to be idiots who cannot count twenty, or tell the days of the week, or who do not know their fathers or mothers, or the like.²

(2) A person made *non compos mentis* by illness is excused in criminal cases from such acts as are committed while under the influence of his disorder.³

(3) A lunatic is one who is afflicted by mental disorder only at certain periods and vicissitudes; having intervals of reason.⁴

Madness is permanent. Lunacy and madness are spoken of as acquired insanity, and idiocy as natural insanity.

(4) As to persons who are drunk see s. 85, *infra*.

1. 'At the time of doing it.'—It must clearly be proved that at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.⁵ If he did know it, he was responsible.⁶ A plea of insanity at the time of trial will not avail the accused.⁷

2. 'Unsoundness of mind.'—Whether the want of capacity is temporary or permanent, natural or supervening, whether it arises from disease, or exists from the time of birth, it is included in this expression. It is only 'unsoundness of mind' which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility.⁸ The nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law.⁹

Partial delusion.—Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is to be therefore excused depends upon the nature of the delusion. If he labours under a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real.¹⁰ If a person afflicted with insane delusion, in respect of one or more particular subjects or persons, commits a crime, knowing that he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed.¹¹

¹ *Bahadur*, (1927) 9 Lah. 371.

² Archiboid, 30th Edn., p. 13; Russell, 9th Edn., Vol. I, p. 16; 1 Hale P. C. 34.

³ 1 Hale P. C. 80.

⁴ Russell, 9th Edn., Vol. I, p. 17; Hale P. C. 31.

⁵ Third question and answer in *M'Naghten's case*, (1843) 4 St. Tr. (N. S.) 47; 10 Cl. & F. 200; *Tata Ram*, (1927) Lah. 684.

⁶ *Harka*, (1906) 26 A. W. N. 193.

⁷ *Nota Ram*, (1866) P. R. No. 56 of 1866.

⁸ *Kader Nasyer Shah*, (1896) 23 Cal. 604, 607.

⁹ *Gedda Goola*, (1937) 16 Pat. 333.

¹⁰ Fourth question and answer in *M'Naghten's case*, sup.; *Ghatu Pramanji*, (1901) 28 Cal. 613.

¹¹ First question and answer in *M'Naghten's case*, sup.

Insanity brought on by drunkenness.—Drunkenness is no excuse, but *delirium tremens* caused by drinking and differing from drunkenness, if it produces such a degree of madness, even for a time, as to render a person incapable of distinguishing right from wrong, relieves him from criminal responsibility.¹ If habitual drunkenness has created fixed insanity, whether permanent or intermittent, it is the same as if insanity had been produced by any other cause, and the act is excused.²

3. 'Nature of the act, or... what is either wrong or contrary to law.'—If the accused were conscious that the act was done which he ought not to do, and if the act was at the same time contrary to the law of the land, he is punishable. His liability will not be diminished if he did the act complained of with a view under the influence of insane delusion of redressing or revenging some supposed grievance or injury, or of producing some public benefit, if he knew that he was acting contrary to law.³ The law recognizes nothing but incapacity to realise the nature of the act and presume that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes.⁴

CASES.—**Homicide by person suffering from fever.**—Where an accused, who was suffering from fever which caused him while suffering from its paroxysms to be bewildered and unconscious, killed his children at being annoyed at their crying, but he was not delirious then, and there was no evidence to show that he was not conscious of the nature of his act, it was held that he was not entitled to protection under this section.⁵

Homicide by 'ganja' smoker.—The accused, an habitual *ganja* smoker, killed his wife and children, because she quarrelled with him and objected to go to a village where he proposed to go. It was held that until the accused's habit of smoking *ganja* had induced in him such a diseased state of mind as to make him incapable of knowing the nature of his act or criminality, this section did not apply in his favour.⁶

Insane delusion.—Where it was proved that the accused had committed multiple murders while suffering from mental derangement of some sort and it was found that there was (i) absence of any motive, (ii) absence of secrecy, (iii) want of pre-arrangement, and (iv) want of accomplices, it was held that the circumstances were insufficient to support the inference that the accused suffered from unsoundness of mind of the kind referred to in this section.⁷

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

COMMENT.—Under this section a person will be exonerated from liability for doing an act while in a state of intoxication if he, at the time of doing it, by reason of intoxication, was

¹ *Davis*, (1881) 14 Cox 563.

² *Bhelka Aham*, (1902) 29 Cal. 498.

³ *M'Naghten's case*, (1843) 4 St. Tr. (N. S.) 847; 10 Cl. & F. 200.

Mani Ram, (1926) 8 Lah. 114.

⁴ *Lakshman Dagdu*, (1886) 10 Bom. 512.

⁵ *Sakharam valad Ramji*, (1890) 14 Bom. 564.

⁶ *Gedka Goala*, (1937) 16 Pat. 333.

- (1) incapable of knowing the nature of the act, or
- (2) that he was doing what was either wrong or contrary to law:

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Voluntary drunkenness is no excuse for the commission of a crime.¹ At the same time drunkenness does not, in the eye of the law, make an offence the more heinous.² It is a species of madness for which the madman is to blame. The law pronounces that the obscuration and divestment of that judgment and human feeling which in a sober state would have prevented the accused from offending, shall not, when produced by his voluntary act, screen him from punishment, although he be no longer capable of self-restraint.³ Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime ought to be taken into consideration in order to determine whether he had that intent.⁴

Under this section if a man is made drunk through stratagem or the fraud of others, or through ignorance, or through any other means causing intoxication without the man's knowledge or against his will, he is excused.⁵

CASE.—The accused ravished a girl of thirteen years of age and, in furtherance of the act of rape, placed his hand upon her mouth and his thumb upon her throat, thereby causing death by suffocation. The sole defence was a plea of drunkenness. It was held that drunkenness was no defence unless it could be established that the accused at the time of committing rape was so drunk that he was incapable of forming the intent to commit it (which was not alleged), inasmuch as the death resulted from a succession of acts, the rape and the act of violence causing suffocation, which could not be regarded independently of each other; and that the accused was guilty of murder.⁶

86. In cases where an act done is not an offence unless done with a particular knowledge or intent,^a a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

COMMENT.—As certain guilty knowledge or intention forms part of the definition of many offences, this section is provided to meet those cases. It says that a person voluntarily drunk will be deemed to have the same knowledge^b as he would have had if he had not been intoxicated. There may be cases in which a particular knowledge is an ingredient, and there may be other cases in which a particular intent is an ingredient, the two not being necessarily always identical. The section does not say that the accused shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. Therefore, although there is a presumption so far as knowledge is concerned, there is no such presumption

¹ *Bodhee Khan*, (1866) 5 W. R. (Cr.) 79; *Bodh Das*, (1866) P. R. No. 41 of 1866.

² *Zoolskar Khan*, (1871) 16 W. R. (Cr.) 36.

³ 7th Parl. Rep., s. 19.

⁴ *Director of Public Prosecutions v.*

Beard, [1920] A. C. 479; *Ramsingh*, [1938] Nag. 305; *Samman Singh*, [1943] Lah. 39.

⁵ 1 Hale P. C. 32.

⁶ *Director of Public Prosecutions v. Beard*, [1920] A. C. 479.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

with regard to intention.¹ Thus this section attributes to a drunken man the knowledge of a sober man when judging of his action but does not give him the same intention. This knowledge is the result of a legal fiction and constructive intention cannot invariably be raised.² Drunkenness makes no difference to the knowledge with which a man is credited and if a man knew what the natural consequences of his acts were he must be presumed to have intended to cause death.³ But this presumption may be rebutted by his showing that at the time he did the act, his mind was so affected by the drink he had taken that he was incapable of forming the intention requisite for making his act the offence charged against him.⁴

Evidence of drunkenness falling short of proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequence of his acts.⁵ Unless drunkenness amounts to unsoundness of mind so as to enable insanity to be pleaded by way of defence, or the degree of drunkenness is such as to establish incapacity in the accused to form the intent necessary to constitute the crime, drunkenness is neither a defence nor a palliation.⁶

87. Nothing which is not intended to cause death, or grievous hurt,

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

and which is not known by the doer to be likely to cause death, or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

ILLUSTRATION.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

COMMENT.—This section protects a person who causes injury to another person above eighteen years of age who has given his consent by doing an act not intended and not known to be likely to cause death or grievous hurt. It appears to proceed upon the maxim *volenti non fit injuria*. He who consents suffers no injury. This rule is founded upon two very simple propositions: (1) that every person is the best judge of his own interest; (2) that no man will consent to what he thinks hurtful to himself. Every man is free to inflict any suffering or damage he chooses on his own person and property; and if, instead of doing this himself, he consents to its being done by another, the doer commits no offence. A man may give away his property, and so another who takes it by his permission does not commit theft. He may inflict self-torture or he may consent to suffer torture at the hands of another.

¹ *Dil Mohammad*, (1941) 21 Pat. 250.

² *Pal Singh*, (1917) P. R. No. 28 of 1917.

³ *Judagi Mallah*, (1929) 8 Pat. 911.

⁴ *Samman Singh*, [1943] Lah. 89.

⁵ *Sheru*, (1923) 7 Lah. 50; *Judagi Mallah*, sup.

⁶ *Waryam Singh*, (1926) 7 Lah. 141.

The section does not permit a man to give his consent to anything intended, or known to be likely to cause his own death or grievous hurt. ✓

Manly sports and exercises.—Ordinary games such as fencing, single sticks, boxing, football, and the like, are protected by this section. The true principle which distinguishes such cases from those where death ensues in consequence of an intent to do a slight injury is, that here bodily harm is not the motive on either side. But proper caution and perfect fair play should be used on both sides. A prize-fight is illegal, and all persons aiding and abetting therein are guilty of assault, and the consent of the persons actually engaged in fighting to the interchange of blows does not afford any answer to the criminal charge of assault; but mere voluntary presence does not render persons so present guilty of an assault as aiding or abetting in such a fight.¹

88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Act not intended to cause death, done by consent in good faith for person's benefit.

ILLUSTRATION.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

COMMENT.—The preceding section allows any harm to be inflicted short of death or grievous hurt. This section sanctions the infliction of any harm if it is for the benefit of the person to whom it is caused. No consent can justify an intentional causing of death. But a person for whose benefit a thing is done may consent that another shall do that thing, even if death may probably ensue. If a person gives his free and intelligent consent to take the risk of an operation which, in a large proportion of cases, has proved fatal, the surgeon who operates cannot be punished even if death ensues. Similarly, if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though when they fired they knew themselves to be likely to cause his death.²

This section differs from the last section in two particulars—(1) under it any harm except death may be inflicted; (2) the age of the person consenting is not mentioned (but see s. 90 under which the age of the consenting party must at least be twelve years).

Persons not qualified as medical practitioners cannot claim the benefit of this section as they can hardly be deemed to act in 'good faith' as that expression is defined in s. 52.

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express

¹ *Coney*, (1882) 8 Q. B. D. 534.

² Note B, p. 108.

or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person : Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death ;

Proviso.

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity ;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity ; .

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

ILLUSTRATION.

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

COMMENT.—This section empowers the guardian of an infant under twelve years or an insane person to consent to the infliction of harm to the infant or the insane person, provided it is done in good faith and is done for his benefit. Persons above twelve years are considered to be capable of giving consent under s. 88. The consent of the guardian of a sufferer, who is an infant or who is of unsound mind, shall have the same effect which the consent of the sufferer himself would have, if the sufferer were of ripe age and sound mind.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact,¹ and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception ; or

Consent known to be given under fear or misconception.

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of insane person.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Consent of child.

COMMENT.—This section does not define 'consent' but describes what is not consent.

This section says that a consent is not a true consent if it is given—

- | | |
|---|---|
| (1) by a person under fear of injury ; | } and the person obtaining the consent knows or has reason to believe this. |
| (2) by a person under a misconception of fact ; | |
| (3) by a person of unsound mind ; | |
| (4) by a person who is intoxicated ; | } and who is unable to understand the nature and consequence of that to which he gives his consent. |
| (5) by a person under twelve years of age. | |

Consent is an act of reason, accompanied with deliberation, the mind weighing as in balance, the good and evil on each side.¹ Consent means an active will in the mind of a person to permit the doing of the act complained of, and knowledge of what is to be done, or of the nature of the act that is being done, is essential to a consent to an act.²

There is a difference between consent and submission; every consent involves a submission; but it by no means follows that a mere submission involves consent.³ Mere submission by one who does not know the nature of the act done cannot be consent.⁴

1. 'Misconception of fact.'—Consent given under a misconception is invalid if the person to whom the consent is given is aware of its existence. A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of this section. An honest misconception by both the parties, however, does not invalidate the consent. For instance, where a man of full age submitted himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and died from the injury, the persons concerned in the act were held guilty of culpable homicide and not murder.⁵ The accused, who professed to be snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm. It was held that the consent given by the deceased allowing themselves to be bitten did not protect the accused, such consent having been founded on a misconception of fact, that is, in the belief that the accused had power by charms to cure snake-bites, and the accused knowing that the consent was given in consequence of such misconception.⁶

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

ILLUSTRATION.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or

¹ Story, s. 222.

² Lock, (1872) L. R. 2. C. C. R. 10,

11.

³ Day, (1841) 9 C. & P. 722, 724.

⁴ Lock, *sup.*, p. 14.

⁵ *Baboolun Hijrah*, (1866) 5 W. R.

(Cr.) 7.

⁶ *Poonai Fattenah*, (1869) 12 W. R.

(Cr.) 7.

be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

COMMENT.—The section serves as a corollary to ss. 87, 88 and 89. It says in explicit terms that consent will only condone the act causing harm to the person giving the consent which will otherwise be an offence. Acts which are offences independently of any harm which they may cause will not be covered by consent given under ss. 87, 88 and 89, *e.g.*, causing miscarriage, public nuisance, offences against public safety, morals, etc.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Act done in good faith for benefit of a person without consent.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death, or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

ILLUSTRATIONS.

(a) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his powers of judging for himself. A has committed no offence.

(b) Z is carried off by a tiger. A fires at the tiger knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

COMMENT.—This section is designed to meet those cases which do not come either under s. 88 or s. 89. The principal object of ss. 88, 89 and 92 is protection of medical practitioners. Illustrations (a) and (b) exemplify cases in which it is impossible to give consent; illustrations (c) and (d), where legal capacity to consent is wanting.

The authors of the Code observe: "There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian, yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught on a blanket below, but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall, though the person who threw it down knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

"In these examples there is what may be called a temporary guardianship justified by the exigency of the case and by the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship, we extend . . . a protection very similar to that which we have given to the acts of regular guardians."¹

This section speaks of 'hurt,' whereas s. 89 speaks of 'grievous hurt,' otherwise the terminology of both the sections is almost identical.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Communication made in good faith.

ILLUSTRATION.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

COMMENTS.—This section protects the innocent without unduly cloaking the guilty.

The communication under this section must be

- (1) made in good faith; and
- (2) for the benefit of the person to whom it is made.

The illustration to this section does not say, however, whether the communication was made to the patient for his benefit.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the

Act to which a person is compelled by threats.

¹ Note B, p. 109.

time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2. A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law; for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this expression.

COMMENT.—By this section a person is excused from the consequences of any act, except (1) murder, and (2) offences against the State punishable with death, done under fear of instant death; but fear of hurt or even of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

Murder committed under a threat of instant death is not excused under this section. But 'murder' does not include abetment of murder and such abetment will be excused.¹

English law.—The English law excuses a person who has been forced to commit an offence by fear of death or of grievous bodily harm, except in cases of treason or homicide. The fear of having houses burnt or goods spoiled is no excuse in the eye of the law for joining and marching with rebels.² He is also excused, under certain conditions, if he is forced to levy war against the King or to adhere to the King's enemies, provided he uses every reasonable endeavour to resist or escape.³ Under the English law a married woman charged with the commission of any criminal act, except treason, homicide, and probably robbery, is, in case her husband shall be present at the time of the commission of such act, presumed to have acted under his coercion, and such coercion excuses the act, unless it appears that she did not so act. There is no provision in favour of the wife under such circumstances in the Penal Code.

Doctrine of compulsion and necessity.—No one can plead the excuse of necessity or compulsion as a defence of an act otherwise penal, except as provided in this section. No man, from a fear of consequences to himself, has a right to make himself a party to committing mischief on mankind.⁴

Except where unsoundness of mind is proved or real fear of instant death is proved, the burden being on the prisoner, pressure of temptation is not an excuse for breaking the law.⁵

¹ *Umadasi Dasi*, (1924) 52 Cal. 112; *Karu*, [1937] Nag. 524.

² *M'Growther's case*, (1746) Foster 13.

³ 7th Parl. Rep. 73.

⁴ *Tyler*, (1838) 8 C. & P. 616, 620; *Maganlal and Mutlal*, (1889) 14 Bom. 115.

⁵ *Devji Govindji*, (1895) 20 Bom. 215, 222, 223.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

COMMENT.—The maxim *de minimis non curat lex* (the law takes no account of trifles) is the foundation of this section. The authors of the Code observe “Clause 73 [this section] is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man’s ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the judges to except them in practice.”¹

CASES.—Acts regarded as trivial.—This section applied where a person was convicted for taking pods, almost valueless, from a tree standing on Government waste land² and where the plaintiff complained of the harm caused to his reputation by the imputation that he was travelling with a wrong ticket.³

Acts not regarded as trivial.—Where a blow was given across the chest with an umbrella by a dismissed policeman to a District Superintendent of Police because his application to reconsider his case was rejected;⁴ where the accused tore up a paper which showed a money debt due from him to the prosecutor though it was unstamped, and therefore not a legal security;⁵ and where a respectable man was taken by the ear,⁶ it was held that this section did not apply.

Of the Right of Private Defence.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body ;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or

¹ Note B, pp. 100, 110.

² *Kasya bin Ravji*, (1868) 5 B. H. C. (Cr. C.) 35.

³ *South Indian Railway Co. v. Ramakrishna*, (1889) 18 Mad. 34.

⁴ *Govt. of Bengal v. Sheo Gholam Lalla*, (1875) 24 W. R. (Cr.) 67.

⁵ *Ramasami*, (1888) 12 Mad. 148.

⁶ *Shoshi Bhusan Mukerjee v. Walm-sley*, (1897) 1 C. W. N. cxxxiv.

which is an attempt to commit theft, robbery, mischief or criminal trespass.

COMMENT.—This section specifies the extent to which the right of private defence can be exercised. Section 99 provides the limitations. These two sections combined together lay down the principles of the right of defence.

The first clause of this section provides for the defence of body against any offence affecting the human body. The second provides for the defence of property against an act which amounts to the commission of certain offences.

There is no obligation upon a person entitled to exercise the right of private defence and to defend his person or property, to retire merely because his assailant threatens him with violence.¹

Right of private defence to be pleaded.—The accused must plead the right of defence. The Allahabad High Court has held that a Court cannot set up such plea when the accused himself has not done so.² But in a later case it has held that the Court, on finding on evidence before it that the accused acted in self-defence, is bound to take cognizance of the fact.³ The Madras High Court has held that even if the accused does not specifically plead private defence, he may be acquitted if the evidence showed that he was acting in self-defence.⁴ The Calcutta and Lahore High Courts have expressed the same view as the Madras High Court.⁵

English law.—This section is much wider than the English law. Under it even a stranger may defend the person or property of another person whereas under the English law there must be some kind of relationship existing, such as that of master and servant, or husband and wife, or guardian and ward, before this right can be exercised on behalf of another.

CASES—Defence of person.—Under circumstances which might have induced the belief that a man was cutting the throat of his wife, their son shot and killed his father. It was held that if the son had reasonable ground for believing and honestly believed that his act was necessary for the defence of his mother, the homicide was excusable.⁶

Defence of property.—Every person in possession of land is entitled to defend his possession against anyone who tries to eject him by force;⁷ or to steal from it;⁸ or to do an act which will have the effect of causing injury to it, e.g., cutting of a bund.⁹ Certain persons who were lawfully in possession, as tenants of agricultural land, having reason to suppose that it was possible that they might be attacked and ejected from the land by force, made a practice of keeping their clubs in readiness, and also persuaded the tenants of some adjacent fields to do likewise. The expected attack came and there was a somewhat severe fight, in the course of which both parties were injured. It was held that the defenders were within their rights in holding themselves in readiness to repel an attack if and when it should come, and were protected by this section.¹⁰ Where a person who had seized cattle which had been trespassing on his lands, gathered together a number of men to assist him in resisting an anticipated attempt to rescue the cattle, and a fight

¹ *Naresht Singh*, (1923) 2 Pat. 395. L. L. J. 284.

² *Gullu*, (1904) 24 A. W. N. 113.

³ *Kishen Lal*, (1924) 22A. L. J. R. 501.

⁴ *Veerana Nandan*, [1912] M. W. N. 404.

⁵ *Upendra Nath Das*, (1914) 19 C. W. N. 653; F.B.; *Afiruddi*, (1919) 29 C. L. J. 571; *Ghulam Rasul*, (1921) 3

⁶ *Rose*, (1884) 15 Cox 540.

⁷ *Sacher*, (1867) 7 W. R. (Cr.) 76 [112].

⁸ *Mokee*, (1869) 12 W. R. (Cr.) 15.

⁹ *Birjoo Singh v. Khub Lal*, (1878) 19 W. R. (Cr.) 66.

¹⁰ *Hira*, (1922) 45 All. 250.

between the parties took place, in which several men on each side were killed and injured, it was held that the person who had seized the cattle and his party were protected by this section.¹ An illegal seizure of cattle with a view to impound them is theft and persons attempting to resist the seizure by force act in the exercise of the right of private defence of property and are as such entitled to the protection afforded by this section.²

Where a bailiff went to a village to make an attachment, but the warrant had become invalid by lapse of the time limited thereby, and the owner of the property resisted and caused grievous hurt to one of the party, it was held that he could not plead any right of private defence of property as such attachment, though illegal, did not amount to any of the offences against which the right of defence was provided, and he was, therefore, guilty of causing grievous hurt.³

98. When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Right of private defence against the act of a person of unsound mind, etc.

ILLUSTRATIONS.

(a) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

COMMENT.—The right of defence would have lost most of its value if it was not allowed to be exercised against persons suffering from the incapacities mentioned in this section.

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office though that act may not be strictly justifiable by law.

Act against which there is no right of private defence.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

¹ *Narshi Singh*, (1928) 2 Pat. 595.

² *Shib Lal*, (1933) 55 All. 617.

³ *Madra*, [1946] Nag. 326.

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right may be exercised.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

— COMMENT.—This section indicates the limits within which the right of defence should be exercised.

First clause.— This clause applies to those cases in which the public servant is acting in good faith under colour of his office, though the particular act being done by him may not be justifiable by law.¹ The clause applies to a case where an official has done wrongly, what he might have done rightly, but not to cases where the act could not have been done rightly at all by the official concerned.² Where a police officer acting *bona fide* under colour of his office arrests a person but without authority, the person so arrested has no right of self-defence against the officer.³ If the act of a public servant is *ultra vires* the right of private defence may be exercised against him.⁴ A police officer, holding a search warrant without a written authority, cannot be said to be acting 'under colour of his office.'⁵

Cases.— **Resistance to officer acting without warrant.**—A police-officer attempted without a search-warrant to enter a house in search of property alleged to have stolen and was obstructed and resisted. It was held that, even though the officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that the officer was acting otherwise than in good faith and without malice.⁶

Illegal attachment does not justify resistance.—Where articles protected from attachment were attached, it was held that this act did not justify resistance.⁷ Where the property of a person was wrongfully attached as the property of certain absconders, it was held that the rightful owner had no right of private defence of his property, as the police-officer was acting in good faith under colour of his office, and that even supposing the order of attachment might not have been properly made, that would in itself be no sufficient ground for such a defence.⁸

Second clause.—The first clause speaks of acts done by a public servant, this clause, of acts done under the direction of a public servant. It is not necessary

¹ *Dalip*, (1896) 18 All. 246, 252.

Achhru Ram, (1925) 7 Lah. 104.

² *Bhairo*, [1941] Kar. 324.

⁵ *Ram Parves*, (1944) 23 Pat. 328.

³ *Mohamed Ismail*, (1935) 13 Ran. 754.

⁶ *Pukot Kotu*, (1890) 19 Mad. 849.

⁷ *Poomalai Udayan*, (1898) 21 Mad.

⁴ *Jogendra Nath Mukerjee*, (1897) 206.

24 Cal. 320; *Tulsiram*, (1898) 13 Bom.

⁸ *Bhai Lal Chowdhry*, (1902) 29

108; *Haq Dad*, (1925) 6 Lah. 392; Cal. 417.

that the doer should be a public servant. Explanation 2 must be read conjointly with this clause.

Cases.—Resistance to execution of warrant.—Where a police-officer attempted to execute a warrant the issue of which was illegal, it was held that the accused were justified in their resistance.¹

Third clause.—The third clause of this section must be read with the first clause of s. 105.² It places an important restriction on the exercise of the right of defence. The right of private defence being granted for defence only, it must not and cannot legally be exercised when there is time to have recourse to the protection of public authorities. The right of private defence does not take the place of the functions of those public servants who are especially charged with the protection of life and property and the apprehension of offenders, and where the assistance of the public authorities can be procured, the right cannot be lawfully exercised. But the law does not intend that a person must run away to have recourse to the protection of public authorities when he is attacked instead of defending himself.³ The important considerations which always arise in order to determine whether the action of the accused is covered by the right of private defence are, firstly, what is the nature of the apprehended danger, and, secondly, whether there was time to have recourse to the police authorities, always remembering that when both the parties are determined to fight and to go up to the land fully armed in full expectation of an armed conflict in order to have a trial of strength the right of private defence disappears.⁴

Cases.—Time to obtain protection of public authorities.—The accused received information one evening that the complainants intended to go on his land on the following day, and uproot the corn sown in it. At about three o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the corn. Thereupon he at once proceeded to the spot, followed by the remaining accused, and remonstrated with the complainants, who commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. It was held that the complainants being the aggressors, the accused had the right of private defence and that they were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night attack on their property.⁵

Fourth clause.—The right of private defence is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. The amount of force necessarily depends on the circumstances of the case, and there is no protection if the harm is caused by excessive violence quite unnecessary to the case.⁶ For example, a person set by his master to watch a garden or yard is not at all justified in shooting at, or injuring in any way, persons who may come into those premises, even in the night. He ought first to see whether he could not take measures for their apprehension'. The measure of self-defence must always be proportionate to the quantum of force used by the attacker and which it is necessary to repel.⁷

Cases.—Justifiable harm.—Where the accused finding a thief entering the

¹ *Jogendra Nath Mukerjee*, (1897) 24 Cal. 320.

² *Narsang Pathabhai*, (1890) 14 Bom. 441.

³ *Alingal Kunhinayan*, (1903) 28 Mad. 454.

⁴ *Satnarain Das*, (1938) 17 Pat. 607.

⁵ *Narsang Pathabhai*, (1890) 14 Bom. 441; *Pachkauri*, (1897) 24 Cal. 686.

⁶ *Gokool Bowree*, (1886) 5 W. R. (Cr.) 33.

⁷ *John Scully*, (1824) 1 C. & P. 319.

⁸ *Ram Prasad Mahton*, (1919) 4 P. L. J. 289.

house at night, through an entrance made in the side-wall, seized him while intruding his body and held him with his face down to the ground to prevent his further entrance and thereby his death was caused by suffocation;¹ where a person attacked by another with a spear struck a blow with a club which resulted in the death of the party attacking;² and where a boy found a person stealing his property and killed him but not intending to do so,³ the right of private defence was held to be a good justification.

More harm caused than necessary.—Where a person killed a weak old woman, found stealing at night;⁴ where a person caught a thief in his house at night and deliberately killed him with a pick-axe to prevent his escape;⁵ and where a number of persons apprehending a thief committing house-breaking strangled him and subjected him to gross maltreatment when he was fully in their power,⁶ the right of private defence was negatived.

English case.—A parker finding a boy stealing wood in his master's ground bound him to his horse's tail, and beat him. The horse took fright and ran away and dragged the boy on the ground till his shoulder was broken, whereof he died. This was ruled to be murder.⁷

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, nemely :—

When the right of private defence of the body extends to causing death.

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

Thirdly.—An assault with the intention of committing rape ;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting ;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

COMMENT.—The law authorizes a man who is under a reasonable apprehension that his life is in danger or his body in risk of grievous hurt to inflict death upon his assailant either when the assault is attempted or directly threatened, but the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self-defence. It must be proportionate to and commensurate with the quality and character of the act it is intended to meet and what is done in excess is not protected.

¹ *Kurrim Bux*, (1865) 3 W. R. (Cr.) 73. See *Bag*, (1902) P. R. No. 29 of 1902; *Mammun*, (1916) P. R. No. 35 of 1916.

² *Moizudin*, (1869) 11 W. R. (Cr.) 41.

³ *Mokee*, (1869) 12 W. R. (Cr.) 15.

⁴ *Gokool Bowree*, (1866) 5 W. R. (Cr.)

⁵ *Dhununjai Poly*, (1870) 14 W. R. (Cr.) 68.

⁶ *Durwan Geer*, (1866) 5 W. R. (Cr.)

⁷ *Halloway*, (1628) 1 East P. C. 237.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99 to the voluntary causing to the assailant of any harm other than death.

When such right extends to causing any harm other than death.

- **COMMENT.**—Any harm short of death can be inflicted in exercising the right of private defence in any case which does not fall within the provisions of s. 100. When dealing with questions relating to right of private defence of the body this section and s. 100 should be read together.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

COMMENT.—This section indicates when the right of private defence of the body commences and till what time it continues. It commences and continues as long as danger to body lasts. The extent to which the exercise of the right will be justified will depend not on the actual danger but on whether there was reasonable apprehension of such danger. There must be an attempt or threat and consequent thereon an apprehension of danger; but it is not a mere idle threat, or every apprehension of a rash or timid mind, that will justify the exercise of the right. Reasonable ground for the apprehension is requisite. Suppose the threat to proceed from a woman or child and to be addressed to a strong man, in such a case there could hardly be a reasonable apprehension. Present and imminent danger seems to be meant.¹ The law does not require that a person should not exercise his right of self-defence if by running away he can avoid injury from his assailant.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

When the right of private defence of property extends to causing death.

First.—Robbery;

Secondly.—House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

¹ M. & M. 78.

COMMENT.—Section 100 enumerates the cases in which the right of private defence of the body extends to the causing of death; this section enumerates the cases in which it extends to the causing of death in defence of property.

A person employed to guard the property of his employer is protected by ss. 97, 99, 103 and 105 if he causes death in safeguarding his employer's property when there is reason to apprehend that the person whose death has been caused was about to commit one of the offences mentioned in this section or to attempt to commit one of those offences. A person whose duty it is to guard a public building is in the same position, that is to say, it is his duty to protect the property of his employer and he may take such steps for this purpose as the law permits. The fact that the property to be guarded is public property does not extend the protection given to a guard. Therefore, a police constable on guard duty at a magazine or other public building is not entitled to fire at a person merely because the latter does not answer his challenge.¹

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

When such right extends to causing any harm other than death.

COMMENT.—Sections 101 and 104 restrict the right of private defence in certain cases to voluntarily causing hurt or grievous hurt. Section 101 is a corollary to s. 100, and this section, to s. 103.

Commencement and continuance of the right of private defence of property.

105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

¹ *Jamuna Singh*, (1844) 23 Pat. 908.

COMMENT.—This section indicates when the right of defence of property commences and till what period it continues. It is similar to s. 102.

First clause.—The right of private defence of property commences when a reasonable apprehension of danger to property commences. Before such apprehension commences the owner of the property is not called upon to apply for protection to the public authorities.

Second clause.—The right of private defence of property against theft continues till (1) the offender has effected his retreat with the property, or (2) the assistance of public authorities is obtained, or (3) the property has been recovered¹. An offender is to be considered as having effected his retreat when he has once got off having escaped immediate pursuit or pursuit not having been made. A recapture of the plundered property, while it is in course of being carried away, is authorized, for the taking and retaking is one transaction. But when the offence has been committed and the property removed, a recapture after an interval of time by the owner or by other persons on his behalf, however justifiable, cannot be deemed an exercise of the right of defence of property. The recovery which the section contemplates seems to be a recovery either immediate or made before the offender has reached his final retreat.² Where the appellants followed up tracks purporting to be those of their stolen cattle, and prior to the arrival of the police (for whose assistance one of their party had ridden away) proceeded to the complainants' village and fired at them, it was held that the appellants' right of private defence of their property had been put an end to by the successful retreat of the thieves, and that their alleged rediscovery of the cattle in the complainants' possession could not revive that right.³

Fourth clause.—In the case of criminal trespass and mischief the right of private defence ceases to exist as soon as the commission of these offences ceases.

Fifth clause.—The right of private defence against house-breaking continues only so long as the house-trespass continues, hence where a person followed a thief and killed him in the open, after the house-trespass had ceased, it was held that he could not plead the right of private defence.⁴

106. If the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the offender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

ILLUSTRATION.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

COMMENT.—This section should be read in the light of s. 100. Injury to innocent persons in the exercise of the right of defence is excusable under it.

¹ *Punjabrao*, [1945] Nag. 881.

² *M. & M.* 81.

³ *Mir Dad*, (1915) 7 Lah. 21.

⁴ *Balakce Jolabad*, (1868) 10 W. R. (Cr.) 9; *Gulbadan*, (1885) P. R. No. 25 of 1885.

CHAPTER V.

OF ABETMENT.

Abetment of a thing. **107.** A person abets the doing of a thing, who—

First.—Instigates any person to do that thing ; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that doing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

ILLUSTRATION.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

COMMENT.—When an offence is committed and several persons take part in the commission of it, each person may contribute in a manner and degree different from the others, to the doing of the criminal act.

The act may be done by the hands of one person while another is present or is close at hand ready to afford help; or the actual doer may be a guilty agent acting under the orders of an absent person: and besides these participators there may be other persons who contribute less directly to the commission of the offence by advice, persuasion, incitement, or aid. It is proper to mark the nature and degree of participation which is essential to criminal liability, but it will be seen that the several gradations of action above referred to are not always treated as denoting necessarily different measures of guilt with a view to distinctions in respect of punishment.¹

Abetment is constituted by

- (1) instigating a person to commit an offence; or
- (2) engaging in a conspiracy to commit it ; or
- (3) intentionally aiding a person to commit it.

(1) **Abetment by instigation.**—**First clause.**—A person is said to ‘instigate’

¹ M. & M. 83.

another to an act, when he actively suggests or stimulates him to the act by any means or language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.¹ The word 'instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act.² Advice *per se* does not necessarily amount to instigation. Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. Advice amounts to instigation only if it was meant actively to suggest or stimulate the commission of an offence.³ Instigation may be of an unknown person.⁴ A mere acquiescence or permission does not amount to instigation.

Explanation 1 to this section says that a person who (1) by wilful misrepresentation, or (2) by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that thing. The illustration is an example of instigation by 'wilful misrepresentation'. Instigation by 'wilful concealment' is where some duty exists which obliges a person to disclose a fact.

Cases.—**Direct instigation.**—Where, of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed, but picked up a stick and used it, B (the master of A), who gave a general order to beat, was held guilty of abetting the assault made by them.⁵

Instigation by letter.—Where one person instigates another to the commission of an offence by means of a letter sent through the post, the offence of abetment by instigation is completed as soon as the contents of such letter become known to the addressee.⁶ If the letter never reaches him the act is only an attempt to abet.⁷

(2) **Abetment by conspiracy.**—**Second clause.**—'Conspiracy' consists in the agreement of two or more [persons] to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means.⁸ It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.⁹ Where parties concert together, and have a common object, the act of one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of all.¹⁰

Before the introduction of chapter VA, conspiracy, except in cases provided for by ss. 121A, 311, 400, 401 and 402 of the Code, was a mere species of abetment when an act or an illegal omission took place in pursuance of that conspiracy, and amounted to a distinct offence for each distinct offence abetted by conspiracy.¹¹

¹ *Amiruddin*, (1922) 24 Bom. L. R. 534, 542.

² *Purimal Chatterji*, (1932) 60 Cal. 327.

³ *Raghunath Dass*, (1920) 5 P. L. J. 120.

⁴ *Ganesh D. Sawarkar*, (1909) 12 Bom. L. R. 105.

⁵ *Rasookoolah*, (1869) 12 W. R. (Cr.) 51.

⁶ *Sheo Dial Mal*, (1894) 16 All. 389.

⁷ *Ransford*, (1874) 13 Cox 9.

⁸ *Per Willes, J.*, in *Mulcahy*, (1868) L. R. 3 H. L. 306, 317. See *Quinn v. Leatham*, [1901] A. C. 495, 528.

⁹ *Explan. 5 to s. 108; Kahl Munda*, (1901) 28 Cal. 797.

¹⁰ *Ameer Khan*, (1871) 17 W. R. 15.

¹¹ *Tirumal Reddi*, (1901) 24 Mad. 523, 546.

Cases.—Suicide.—Where a woman prepared herself to commit suicide in the presence of the accused, and they followed her up to the pyre and stood by her stepsons crying “Ram, Ram,” and one of the accused admitted that he told the woman to say “Ram, Ram,” and she would become *suttee*, it was held that this amounted to connivance and unequivocal countenance of the suicide on the part of the accused.¹

Forgery.—Preparing in conjunction with others a copy of an intended false document, buying a stamped paper for the purpose of writing such false document, and asking for information as to a fact to be inserted in such false document, were held to support a conviction for abetment of forgery.²

(3) **Abetment by aid.**—Third clause.—By act.—A person abets by aiding, when by act done either prior to, or at the time of, the commission of an act, he intends to facilitate, and does in fact facilitate, the commission thereof (*vide* expln. 2). For instance, the supplying of necessary food to a person known to be engaged in crime is not *per se* criminal: but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it.³ Mere presence at the commission of a crime cannot amount to intentional aid unless it was intended to have that effect. To be present and aware that an offence is about to be committed does not constitute abetment unless the person thus present holds some position of rank or influence such that his countenancing what takes place may, under the circumstances, be held a direct encouragement, or unless some specific duty of prevention rests on him, which he leaves unfulfilled, in such wise that he may be safely taken as having joined in a conspiracy for the perpetration of the offence.⁴

By illegal omission.—To prove abetment by ‘illegal omission’, it is necessary to show that the accused intentionally aided the commission of the offence by his non-interference,⁵ and the omission involved a breach of legal obligation.⁶

Cases.—By act.—Presence at bigamous marriage.—A priest, who officiated at a bigamous marriage, was held to have intentionally aided it, but not the persons who were merely present at the celebration or who permitted its celebration in their house, when such permission afforded no particular facility for the act.⁷

Acceptance of unstamped receipt not aiding.—Where a debtor paid a sum of money to his creditor, and asked for a stamped receipt from him, who had not at hand a stamp and then accepted an unstamped receipt saying he would affix a stamp thereto, which he did not do, it was held that this did not constitute abet-

¹ *Mohit Pandey*, (1871) 3 N. W. P. 816.

² *Pudala Venkatasami*, (1881) 3 Mad. 4.

³ *Lingam Ramanna*, (1880) 2 Mad. 187.

⁴ *Lakshmi*, (1886) Unrep. Cr. C. 303.

⁵ *Khajah Noorul Hossein v. Fabre-Tonnerie*, (1875) 24 W. R. (Cr.) 26.

⁶ *Cooverji*, (1906) 9 Bom. L. R. 159; *Khadim Sheikh*, (1869) 4 Beng. L. R. (A. Cr. J.) 7.

⁷ *Umi*, (1882) 6 Bom. 126.

ment of the offence of giving an unstamped receipt because he had done or committed nothing which it was in his power to effect.¹

Act abetted illegal but not offence.—A guardian of a Mahomedan married a female infant who, while her husband was living, caused a marriage ceremony to be gone through in her name, but in her absence and without her consent, with another man, was held not to have committed the offence of abetting the commission of an offence under s. 404.² Because to constitute abetment the accused must be proved either to have instigated or aided some person to commit an offence.

By illegal omission.—Non-interference where there is duty to interfere.—Where a Head Constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment.³ But the mere fact that the offence of extortion was committed in the presence of a village police-officer, without eliciting any disapproval on his part, was held not to render him liable as an abettor.⁴

Attempt.—The abetment of an offence within the meaning of s. 40 being itself an offence punishable under this Chapter, an attempt to commit the offence of abetment is provided for in s. 511, and there is, therefore, no legal obstacle to punishing such offence.⁵

English law.—According to English law criminals are divided into four classes. The distinction is based on the consideration whether a party was present or absent at the commission of the offence.

(1) *Principal in the first degree.*—One who is the actual perpetrator of the crime. It is not necessary that he should be actually present when the offence is committed; thus one who lays poison or a trap for another is a principal in the first degree. Nor need the deed be done by the principal's own hands; for it will suffice if it is done through an innocent agent, as, for instance, if one incites a child or a madman to murder. Even an animal may be employed as an innocent agent. For example, a person who sets a dog upon people is himself guilty of assaulting them.

(2) *Principal in the second degree.*—One by whom the actual perpetrator of the crime is aided and abetted at the very time when it is committed. He may or may not be actually present at the scene of the crime. It will suffice if he has the intention of giving assistance, and is sufficiently near to give the assistance; as when one is watching outside while others are committing a felony inside the house, or seconds in a prize fight which ends fatally. An aider or abettor is only liable for such crimes committed by the principal in the first degree as were done in execution of their common purpose.

Both the above classes of principals are liable to the same punishment.

(3) *Accessory before the fact.*—One who, being absent at the time when the felony is committed, yet procures, counsels, commands, or abets another to commit a felony. He is punishable in all respects as the principal felon. If present at the commission he would be a principal.

(4) *Accessory after the fact.*—One who, knowing a felony to have been committed by another, receives, relieves, comforts, assists, harbours, or maintains the

¹ *Mithu Lal*, (1885) 8 All. 19; *Janki*, (1882) 7 Bom. 82.

⁴ *Gopal Chunder Sirdar*, (1882) 8 Cal. 728.

² *Abdool Kurreem*, (1878) 4 Cal. 10.

⁵ *R. Spier*, (1887) P. R. No. 49 of

³ *Kali Churn Gangooly*, (1873) 21 W. R. (Cr.) 11.

felon. A felony must be actually committed or there cannot be any accessories.

Principals are dealt with in the Penal Code under ss. 84 to 88. There is no distinction between 'principals in the first degree' and 'principals in the second degree' in the Code.

The offence of abetment corresponds as nearly as one word can be said to correspond to another to the offence which is known in England of being an accessory before the fact. But mere concurrence—that kind of passive concurrence which is known in England as being an 'accessory after the fact'—is not abetment and is not to be treated as abetment.

'Accessory after the fact' is treated in scattered sections: see provisions relating to harbouring, ss. 212, 216; and also ss. 52A, 180, 136, 137, 410-414.

108. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

✓ *Explanation 2.*—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

ILLUSTRATIONS.

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

✓ *Explanation 3.*—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

ILLUSTRATIONS.

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being capable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in conse-

quence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

ILLUSTRATION.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

ILLUSTRATION.

A conspires with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

COMMENT.—Abetment under the Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence, and it is of the essence of the crime of abetment that the abettor should substantially assist the principal culprit towards the commission of the offence. Nowhere concurrence in the criminal acts of another without such participation therein as helps to effect the criminal act or purpose is punishable under the Code.

'Abettor,' under this section, means the person who abets (1) the commission of an offence, or (2) the commission of an act which would be an offence if committed by a person not suffering from any physical or mental incapacity. In the light of the preceding section he must be an instigator or a conspirator or an intentional helper.

There must be abetment of the commission of an act. The section does not contemplate any acts of subsequent abetment. Thus a person cannot be convicted of abetment of a false charge solely on the ground of his having given evidence in support of such charge.¹

Explanation 1.—If a public servant is guilty of an illegal omission of duty made punishable by the Code, and a private person instigates him, then he abets

¹ *Ram Panda*, (1872) 9 Beng. L. R. (Appx.) 16.

the offence of which such public servant is guilty, though the abettor, being a private person, could not himself have been guilty of that offence.

Explanation 2.—The offence of abetment is complete notwithstanding that the person abetted refuses to do the thing, or fails involuntarily in doing it, or does it and the expected result does not follow. The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.

An offence can be abetted though the means which are intended to be employed are such that it is physically impossible that the effect requisite to constitute the offence should be caused by them.¹ In a Bombay case a doubt has been expressed whether abetment of murder by sorcery or other impossible means is an offence under the Code.²

Explanation 3.—This Explanation makes it clear that the person abetted need not have any guilty intention in committing the act abetted. It applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment.³ If a man does, by means of an innocent agent, an act which amounts to a crime, the employer, and not the agent, is guilty of the act.⁴ Illustrations (b), (c) and (d) exemplify this Explanation.

The offence of abetment depends upon the intention of the person who abets and not upon the knowledge or intention of the person he employs to act for him.

Explanation 4.—This Explanation is to be read as follows: "When the abetment of an offence is an offence the abetment of such an abetment is also an offence." The words "when the abetment of an offence is an offence" do not mean "when an abetment of an offence is actually committed," but that, when the abetment of an offence is by definition or description an offence under the Penal Code, that is, when an abetment of an offence is punishable under s. 109 or s. 116 or other provision of the Code, then the abetment of such abetment is also an offence.⁵ The abetment of an abetment of an offence is no more and no less than the abetment of that offence.

According to this Explanation a person may make himself an abettor by intervention of a third person, without any direct communication between himself and the person employed to do the thing.

It is not necessary to an indictment for the offence of an abetment of an offence to show that such offence was actually committed. A sought the aid of B with the intention of committing a theft of the property of B's master, B with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that though the offence of theft was not committed yet A was liable for abetment of theft.⁶ Where the accused asked a native doctor to supply her with medicine for the purpose of poisoning her son-in-law, it was held that the offence committed might be treated as an instigation of the doctor to abet the accused in the commission of the murder, and, with reference to this Explanation, could be punished under ss. 116, 302.⁷

The accused telephoned to A asking if he could have two boys for immoral purposes. No particular boys were named or indicated. It was held that as the accused

¹ *Sahib Ditta*, (1885) P. R. No. 20 of 1885.

² *Pestnaji Dinsha*, (1873) 10 B. II. C. 75.

³ *Chaube Dinkar Rao*, (1933) 55 All. 654.

⁴ *Bleasdale*, (1848) 2 C. & K. 765.

⁵ *Srital Chamaria*, (1918) 46 Cal. 607.

⁶ *Troylukho Nath Chowdhry*, (1878) 4 Cal. 366.

⁷ *Musht. Bakhtawar*, (1882) P. R. No. 24 of 1882.

was inciting A to commit what, if he had done the acts, would have been an offence, the accused was guilty of inciting A to incite another to commit an offence.¹

Abetment is substantive offence.—The offence of abetment is a substantive one and the conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.²

Principal cannot be abettor.—A person who has been convicted of an offence as principal cannot also be punished for abetting it.³

108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

Abetment in British India of offences outside it.

ILLUSTRATION.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

COMMENT.—This section makes an abetment in British India by a British subject of an act committed in a foreign territory an offence punishable under the Penal Code if it would constitute an offence if committed in British India.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

ILLUSTRATIONS.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

COMMENT.—Under this section the abettor is liable to any punishment, which may be inflicted on the principal offender, (1) if the act of the latter is committed in consequence of the abetment, and (2) no express provision is made in the Code for the punishment of such an abetment.

¹ Bentley, [1923] 1 K. B. 403.

² Jeetoo Chowdhry, (1865) 4 W. R.

³ Maruti Dada, (1875) 1 Bom. 15; (Cr.) 23.

Alah Ditta, (1885) P. R. No. 20 of 1885.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Punishment of abetment if person abetted does act with different intention from that of abettor.

COMMENT.—This section provides that though the person abetted commits the offence with a different intention or knowledge yet the abettor will be punished with the punishment provided for the offence abetted. The liability of the person abetted is not affected by this section.

Explanation 3 to s. 108 should be read in connection with this section. See illustration (d).

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent, as if he had directly abetted it :

Liability of abettor when one act abetted and different act done.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

proviso.

ILLUSTRATIONS.

(a) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

COMMENT.—This section proceeds on the maxim "every man is presumed to intend the natural consequences of his act." If one man instigates another to perpetrate a particular crime, and that other, in pursuance of such instigation, not only perpetrates that crime, but, in the course of doing so, commits another crime in furtherance of it, the former is criminally responsible as an abettor in respect of such last mentioned crime, if it is one which, as a reasonable man, he must, at the time of the instigation, have known would, in the ordinary course of things, probably have to be committed in order to carry out the original crime. B and C instigated A to rob the deceased on his return home after receiving a sum of money: whereupon A killed the deceased. A was convicted of murder and B

and C of offences under ss. 109, 392.¹ A probable consequence of an act is one which is likely or which can reasonably be expected to follow from such act; an unusual or unexpected consequence cannot be described as a probable one. When the act done is different from the act instigated, an abettor is only liable for such a different act if it was a likely consequence of the instigation or if it was an act which the instigator could reasonably have been expected to foresee might be committed as a result of his instigation. Where the act contemplated and instigated was no more than a thrashing with a lathi, but one of the assailants suddenly took out a spearhead from his pocket and fatally stabbed the person who was to be thrashed, the others were not held liable for murder or of abetment of murder.²

Under this section where an act is abetted and the abetment takes the form of instigation of an act, and a different act is done, that different act must be a probable consequence and committed under the influence of the instigation; but where the abetment takes the form of aiding or a conspiracy, the different act must be a probable consequence and also with the aid or in pursuance of the conspiracy.³ The accused and his companion beat a person with their fists and his another companion threatened him with a knife, in order to extract Rs. 10 from him. The complainant, who accompanied the attacked person, intervened, when the armed companion stabbed him on the ear and inflicted grievous hurt. The accused having been prosecuted for abetment of assault on the complainant by virtue of this section, it was held that in order to render the accused liable under this section, the prosecution should show, not only that the assault on the complainant was a probable consequence of the conspiracy to assault but also that it was done in pursuance of that conspiracy.⁴

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

ILLUSTRATION.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

COMMENT.—This section extends the principle enunciated in the preceding section. Under it the abettor is punished for the offence abetted as well as the offence committed.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

¹ *Mathura Das*, (1884) 6 All. 491, 494.

² *Girja Prasad*, (1934) 57 All. 717.

³ *Sonappa Shina Shetty*, (1939) 42 Bom. L. R. 205.

⁴ *Ibid.*

effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

ILLUSTRATION.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

COMMENT.—This section should be read in conjunction with s. 111. Section 111 provides for the doing of an act different from the one abetted whereas this section deals with the case when the act done is the same as the act abetted but its effect is different.

114. Whenever any person, who if absent would be liable to be punished as an abettor, is present¹ when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

COMMENT.—This section “is only brought into operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of that crime is proved in addition.... Section 114 deals with the case, where there has been the crime of abetment, but where also there has been actual commission of the crime abetted and the abettor has been present thereat, and the way in which it deals with such a case as this. Instead of the crime being still abetment with circumstances of aggravation, the crime becomes the very crime abetted. The section is evidentiary not punitive. Because participation *de facto*... may sometimes be obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by s. 114 brings the case within the ambit of s. 34.”¹ The meaning of this section is, that if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it. The abetment must be complete apart from the mere presence of the abettor.² The words “who if absent would be liable to be punished as an abettor” clearly show that abetment must be one prior to the commission of the offence and complete by itself.³ This section simply provides for the punishment of what the English law calls ‘principals in the second degree.’ Where, for instance, a blow is struck by A, in the presence of, and by the order of, B both are principals in the transaction. If A instigates B to murder, he commits abetment; if absent, he is punishable as an abettor, and if the offence is committed, then under s. 109; if present, he is by this section deemed to have committed the offence and is punishable as a principal.

Sections 34 and 114.—The distinction between ss. 34 and 114 is a very fine one. According to s. 34, where a criminal act is done by several persons, in furtherance

¹ *Barendra Kumar Ghosh*, (1924)

52 I. A. 40 53, 27 Bom. L. R. 148, 159, Mad. 263.

52 Cal. 197.

² *Krishnasami Naidu*, (1927) 51

Mad. 263.

³ *Sital*, (1935) 11 Luck. 384.

of the common intention of all, each of them is liable as if it were done by himself alone: so that if two or more persons are present, aiding and abetting in the commission of a murder, each will be tried and convicted as a principal, though it might not be proved which of them actually committed the act. Section 114 refers to the case where a person by abetment, previous to the commission of the act, renders himself liable as an abettor, is present when the act is committed, but takes no active part in the doing of it.¹

1. 'Present.'—It is not necessary that the party should be actually present, an ear or eye witness of the transaction; he is, in construction of law, present, aiding and abetting, if, with the intention of giving assistance, he be near enough to afford it, should occasion arise. A conspirator, who, while his friends enter into a house and loot it, stands and watches outside in pursuance of the common design, does not escape liability under the section.² Presence during the whole of the transaction is not necessary. For instance, if several persons combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals.³

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision¹ is made by this Code for the punishment of such abetment,² be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

ILLUSTRATION.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

COMMENT.—This section punishes the abetment of certain offences which are either not committed at all, or not committed in consequence of abetment or only in part committed.

When more than ten persons are instigated to commit an offence punishable with death, the offence comes under this section as well as under s. 117. 'Abetment under this section need not necessarily be abetment of the commission of an offence

¹ *Jan Mahomed*, (1864) 1 W. R. (Cr.) 355.

² *Nga Po Kyone*, (1938) 11 Ran. 354.

³ *Khandu*, (1890) 1 Bom. L. R. 351, 446.

⁴ *Bingley's Case*, (1821) Russ. & Ry.

by a particular person against a particular person.¹

1. 'Express provision.'—This refers to sections in which specific cases of abetment of offences punishable with death or transportation for life are dealt with.²

2. 'Such abetment.'—These words refer to the abetment of the offence specified in the section itself, namely an offence punishable with death or transportation for life, and only ss. 121 and 181 provide for the punishment of the abetment of such offence.³

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both ;

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Abetment of offence punishable with imprisonment—if offence be not committed;

If abettor or person abetted be a public servant whose duty it is to prevent offence.

ILLUSTRATIONS.

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence. A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(c) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

COMMENT.—This section provides for the abetment of an offence punishable with imprisonment. There is no corresponding provision in the Code relating to abetment of an offence punishable with fine only.

Three different states of fact may arise after an abetment—

(1) No offence may be committed. In this case the offender is punishable under ss. 115 and 116 for the mere attempt to commit a crime.

(2) The very act at which the abetment aims may be committed, and will be punishable under ss. 109 and 110.

¹ *Dwarkanath Goswami*, (1932) 60 Cal. 427; *Lavji Mandan*, (1939) 41 Bom. L. R. 980.

² *Ibid.*

³ *Lavji Mandan*, *sup.*

(3) Some act different but naturally flowing from the act abetted, may be perpetrated, in which case the instigator will fall under the penalties of ss.111, 112 and 113.

CASES.—A person who *pays* a gratification to a public servant, who does not himself commit an offence under s. 161, is guilty of an offence under ss. 116 and 161. If he only *offers* to pay such gratification he is punishable under ss. 116, 161 and 511.¹ Where S instigated K, a bench clerk in the Court of M, a Presidency Magistrate, to instigate the latter to accept an illegal gratification for acquitting an accused in a case pending before him and granting sanction against the complainant in the case, and K received such gratification as a police spy, and intending to get S arrested, and did not in fact instigate M to accept the same, it was held that S was guilty of the abetment of bribery under s. 161 read with this section.²

117. Whoever abets the commission of an offence by the public generally¹ or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting commission of offence by the public or by more than ten persons.

ILLUSTRATION.

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

COMMENT.—Abetment has a reference both to the person or persons abetted, and to the offence or offences the commission of which is abetted. This section deals with the former, whatever may be the nature of the offence abetted, while s. 115 deals with the latter, without having regard to the person or persons abetted.³

Under this section it will be sufficient to show any instigation or other mode of abetment, though neither the effect intended, nor any other effect follows from it. The gravamen of a charge under this section is the abetment itself, the instigation to general lawlessness, not the particular offence of which the commission is instigated.⁴ The section covers all offences and is a general provision for abetment by any number of persons exceeding ten. When more than ten persons are instigated to commit an offence punishable with death, the offence comes under s. 115 as well as this section.⁵ Abetment of the commission of murder, whether by a single individual or by a class of persons exceeding ten, falls under s. 115.⁶ In the latter case it may fall under this section also, but as this section prescribes a lesser punishment, s. 115 is the more appropriate provision for such an offence. Although both the sections are applicable, there cannot be separate sentences under the two sections for the same criminal act, and the conviction should properly be under that section which inflicts the higher punishment.⁶

1. 'Public generally.'—This section applies to the abetment of an offence which is punishable under s. 47 of the Bombay Salt Act, 1890, and which is committed

¹ *Ahad Shah*, (1917) P. R. No. 18 of 1918.

² *Srilal Chamaria*, (1918) 46 Cal. 607.

³ *Lavji Mandan*, (1939) 41 Bom. L. R. 980.

⁴ *Konda Satyavatamma*, (1931) 55 Mad. 90.

⁵ *Dwarkanath Goswami*, (1932) 60 Cal. 427.

⁶ *Lavji Mandan*, sup.

by the public generally or any member or class of persons exceeding ten.¹ The Chief Court of Oudh has held to the contrary. It has laid down that it is illegal to proceed under this section which allows a higher punishment for abetment of an offence for the punishment of which a lighter and separate penalty is provided by the provisions of s. 9 of the Indian Salt Act.²

Instigation to public essential.—A mere intention or preparation to instigate is neither instigation nor abetment. In order to constitute an offence under this section by posting leaflets it is necessary that either the public should have read the leaflets or that they should have been exposed to public gaze.³

118. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or transportation for life—

Concealing design to commit offence punishable with death or transportation for life—

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence or makes any representation which he knows to be false respecting such designs,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

if offence be committed;

if offence be not committed.

ILLUSTRATION.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

COMMENT.—Sections 118, 119 and 120 all contemplate the concealment of a design by persons other than the accused to commit the offence charged. These sections apply to the concealment of all offences except those which are merely punishable with fine. Under s. 107 concealment of a design to commit an offence constitutes an abetment. There must be an obligation on the person concealing the offence to disclose it.⁴ The Code of Criminal Procedure creates such obligation in respect of several offences of a serious nature. The concealment to be criminal must be intentional or at least with knowledge that it will facilitate the commission of an offence.

119. Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent,

Public servant concealing design to commit offence which it is his duty to prevent—

¹ *Ganesh*, (1930) 83 Bom. L. R. 56, 55 Bom. 322.

² *Oudh Bar Association, Lucknow*, (1930) 6 Luck. 286.

³ *Parimal Chatterji*, (1932) 60 Cal. 327.

⁴ *Bahadur*, (1882) P. R. No. 34 of 1882.

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both ;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years ;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

ILLUSTRATION.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

COMMENT.—Section 118 deals with persons who are not public servants. In this section the same principle is extended to public servants but with severer penalty.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

COMMENT.—The basic principle of this section and s. 118 is one and the same. Section 118 deals with offences punishable with death or transportation for life ; this section deals with offences punishable with imprisonment. All offences except those punishable with fine are included in these two sections.

CHAPTER VA.

CRIMINAL CONSPIRACY.

Definition of criminal
conspiracy.

120A. When two or more persons agree to do,
or cause to be done,—

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

COMMENT.—This Chapter has introduced into the criminal law of India a new offence, namely, the offence of criminal conspiracy.

Ingredients.—The ingredients of this offence are—

- (1) that there must be an agreement between the persons who are alleged to conspire ; and
- (2) that the agreement should be
 - (i) for doing of an illegal act, or
 - (ii) for doing by illegal means an act which may not itself be illegal.

To constitute a criminal conspiracy there must be an agreement of two or more persons, to do an act which is illegal or which is to be done by illegal means. The gist of the offence is the bare engagement and association to break the law, whether any act be done in pursuance thereof by the conspirators or not.¹ The object in view or the methods employed should be illegal, as defined in s. 43, *supra*. A distinction is drawn between an agreement to commit an offence, and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement; in the case of the latter, there must be some act done by one or more of the parties to the agreement to effect the object thereof, that is, there must be an overt act.

Although a mere agreement to do an illegal act or a legal act by illegal means is itself a conspiracy, the conspiracy is not concluded directly the agreement is made in the sense that the offence is once and for all constituted. A criminal conspiracy may persist as long as the persons constituting it continue to act in accord in furtherance of their objects.²

Sections 34 and 120A.—there is not much substantial difference between conspiracy as defined in s. 120A and acting on a common intention, as contemplated in s. 34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under s. 34 is the commission of a criminal act in furtherance of a common

¹ *Mohammad Ismail*, [1936] Nag. 152.

² *Abdul Rahaman*, (1935) 62 Cal. 749.

intention of all the offenders, which means that there should be unity of criminal behaviour resulting in something, for which an individual would be punishable, if it were all done by himself alone.¹

120B. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description of a term not exceeding six months, or with fine or with both.

COMMENT.—The punishment for conspiracy is the same as if the conspirator had abetted the offence.² The punishment for a criminal conspiracy is more severe if the agreement is one to commit a serious offence; it is less severe if the agreement is to commit an act which, although illegal, is not an offence. The punishment awardable under this section varies according as the offence has or has not been committed in consequence of the conspiracy. If an offence has been committed, the punishment is that provided by s. 109 of the Penal Code, though, strictly speaking, there should not be a conviction in such cases of conspiracy but of abetment. If it has not been committed, the punishment is governed by s. 116 of the Penal Code.³

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

The offences against the State fall into the following groups :—

I. Waging, or attempting or conspiring to wage, or collecting men and ammunition to wage war against the King-Emperor (ss. 121, 121A, 122, 123).

II. Assaulting Governor General, or Governor, or a Member of the Executive Council with intent to compel or restrain the exercise of any lawful power (s. 124).

III. Sedition (s. 124A).

IV. War against a Power at peace with the King-Emperor (s. 125) or committing depredations on the territories of such Power (ss. 125-126).

V. Permitting or aiding or negligently suffering the escape of, or rescuing or harbouring, a State prisoner (ss. 128, 129, 130).

121. Whoever wages war¹ against the Queen, or attempts to wage such war, or abets the waging of such war,² shall be punished with death, or transportation for life, and shall also be liable to fine.

¹ Waging or attempting to wage war or abetting waging of war against the Queen.

¹ *Provincial Government, Central Provinces and Berar v. Dinanath*, [1939] Nag. 644.

² *Alim Jan Bibi*, [1937] 1 Cal.

484.

³ *Harsha Nath Chatterjee*, (1914) 42 Cal. 1153; *Karamalli Gulamalli*, (1938) 40 Bom. L. R. 1092, [1939] Bom. 42.

ILLUSTRATIONS.

(a) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

COMMENT.—This section embraces every description of war, whether by insurrection or invasion. It punishes equally the waging of war against the King-Emperor, or attempting to wage such war, or abetting the waging of such war. The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the King, under this section, are offences under the Penal Code only, and are not treason or misprison of treason.¹

Neither the number of persons nor the manner in which they are assembled or armed is material to constitute an offence under this section. The true criterion is the purpose or intention with which the gathering assembled. The object of the gathering must be to attain by force and violence an object of a general public nature thereby striking directly against the King's authority.^{2(a)}

1. 'Wages war'.—These words naturally import a person arraying himself in defiance of the King-Emperor in like manner and by like means as a foreign enemy would do, having gained footing within the realm.³ There must be an insurrection, there must be force accompanying that insurrection, and it must be for an object of a general nature.³ The waging of war is the attempt to accomplish by violence any purpose of a public nature.⁴ When a multitude rises and assembles to attain by force and violence any object of a general public nature, it amounts to levying war against the King. It is not the number or the force, but the purpose and intention, that constitutes the offence and distinguishes it from riot or any other rising for a private purpose. A deliberate and organised attack upon the Crown forces would amount to a waging of war if the object of the insurgents was by armed force and violence to overcome the servants of the Crown and thereby to prevent the general collection of the capitation-tax.⁵

Where the rioting or tumult is merely to accomplish some private purpose, interesting only to those engaged in it, not resisting or calling in question the King's authority or prerogative, then the tumult, however numerous or outrageous the mob may be, is only a riot. But wherever the raising or insurrection has for its object a general purpose, not confined to the peculiar interests of the persons concerned in it, but common to the whole community, and striking directly against the King's authority then it assumes the character of treason. The numbers concerned and the manner in which they were equipped or armed are not material.

Prima facie, persons who attack a police-station are guilty of rioting, and that if the Crown charges them instead with waging war against the King, it is incumbent on the Crown to show that there is an insurrection and not a riot, and the insurrection is for the accomplishment of an object of a general nature.⁶

2. 'Abets the waging of such war.'—Such abetment is made a special offence. It is not essential that as a result of the abetment the war should be waged in fact. The main purpose of the instigation should be 'the waging of war.' It should not

¹ *Amiruddin*, (1871) 7 Beng. L. R. 63.

⁴ *Hasrat Mohani*, (1922) 24 Bom. L. R. 885.

^{2a} *Maganlal*, [1946] Nag. 126.

⁵ *Aung Hla*, (1931) 9 Ran. 404.

³ 2nd Rep., s. 10.

⁶ *Jubba Mullah*, (1943) 22 Pat. 662.

³ *Frost*, (1830) 9 C. & P. 129.

be merely a remote and incidental purpose but the thing principally aimed at by the instigation. There must be active suggestion or stimulation to the use of violence.¹

While under the general law as to abetment a distinction is made for the purpose of punishment between abetment which has succeeded and abetment which has failed this section does away with the distinction and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatsoever. There is thus no distinction between principal and accessory, and all who take part in the unlawful act incur the same guilt.²

The authors of the Code say: "We have...made the abetting of hostilities against the Government, in certain cases, a separate offence, instead of leaving it to the operation of the general law laid down in the chapter on abetment. We have done so for two reasons. In the first place, war may be waged against the Government by persons in whom it is no offence to wage such war by foreign princes and their subjects. Our general rules on the subject of abetment would apply to the case of a person residing in the British territories who should abet a subject of the British Government in waging war against that Government; but they would not reach the case of a person who, while residing in the British territories, should abet the waging of war by any foreign prince against the British Government. In the second place, we agree with the great body of legislators in thinking, that though in general a person who has been a party to a criminal design which has not been carried into effect, ought not to be punished so severely as if that design had been carried into effect, yet an exception to this rule must be made with respect to high offences against the State; for state-crimes, and especially the most heinous and formidable state-crimes, have this peculiarity, that if they are successfully committed, the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is despatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the Government. As the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginnings of rebellion, against treasonable designs which have been carried no further than plots and preparations. We have therefore not thought it expedient to leave such plots and preparations to the ordinary law of abetment.... Under that general law, a conspiracy for the subversion of the Government would not be punished at all if the conspirators were detected before they had done more than discuss plans, adopt resolutions and interchange promises of fidelity. A conspiracy for the subversion of the Government, which should be carried as far as the gunpowder treason or the assassination plot against William the Third, would be punished very much less severely than the counterfeiting of a rupee, or the presenting of a forged cheque. We have, therefore, thought it absolutely necessary to make separate provision for the previous abetting of great state offences. The subsequent abetting of such offences, may, we think, without inconvenience, be left to be dealt with according to the general law."³

121A. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India¹ or of British Burma or of any part thereof,

Conspiracy to commit offences punishable by section 121.

¹ *Hasrat Mohani*, (1922) 24 Bom. L. R. 885.

² *Maganlal*, [1946] Nag. 126.

³ Note C, p. 119.

or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any Provincial Government or the Government of Burma, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

COMMENT.—This section provides for the offence of conspiring to wage war against the King. It was thought right to make the offence of conspiring by criminal force, or by show of criminal force, more severely penal than the offence of actually taking part in an unlawful assembly, having for its object the overawing of the Government. The reason was this, that persons who, by conspiring to bring about such a result, set the whole matter in motion, seemed more criminal and far more deserving of punishment than those who were their mere tools, and only took part in such an assembly.

A conspiracy is a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means.¹ See s. 120 A for the definition of 'criminal conspiracy.' This section draws a distinction between the sovereign for the time being of the United Kingdom and the Central Government or Provincial Government. Any conspiracy to change the form of the Central Government or Provincial Government, even though it may amount to an offence under another section of the Code, would not be an offence under this section, unless it is a conspiracy to overawe such Government by means of criminal force, or show of criminal force.²

Ingredients.—The section deals with two kinds of conspiracies : —

1. Conspiring within or without British India (*a*) to commit any of the offences punishable by s. 121, or (*b*) to deprive the King of the sovereignty of British India or any part thereof.

2. Conspiring to overawe by means of criminal force, or the show of criminal force, the Government.

1. 'Depriving the Queen of the sovereignty of British India.'—Depriving His Majesty of the sovereignty of British India would obviously include the severance of the connection of India with the Imperial Government in England. Any conspiracy to establish the complete independence of India as distinct from obtaining for it the status of a self-governing Dominion within the British Empire, would be tantamount to conspiring to deprive His Majesty of the sovereignty of British India. The same result would follow if there was a conspiracy to establish a perfectly democratic or republican form of Government in India outside the British Empire. The reference to "The Queen" is not a reference to the personality of the sovereign for the time being. No doubt s. 13 defines "The Queen" as the sovereign for the time being of the United Kingdom. For this section it is not necessary to establish that there is a conspiracy to deprive His Majesty the present King-Emperor of his sovereignty of British India, i.e., within the lifetime of the present King-Emperor; and the question whether the conspiracy is or is not expected or contemplated to succeed within the lifetime of the present King-Emperor is immaterial.³

¹ *Barind, a Kumar Ghose*, (1909) 37 Cal. 467.

² *Jhabwala*, (1933) 55 All. 1040.

³ *Ibid.*

Explanation.—The Explanation to this section says that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission should take place in pursuance thereof. The conspiracy must be to deprive the King-Emperor of the sovereignty of India.

122. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Collecting arms, etc., with intention of waging war against the Queen.

COMMENT.—This section is intended to put down with a heavy hand any preparation to wage war against the King-Emperor. The acts made punishable by this section cannot be considered attempts; they are in truth preparations made for committing the offence of waging war.

123. Whoever, by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Concealing with intent to facilitate design to wage war

COMMENT.—This section reiterates the principle enunciated in section 118, the only difference being that the penalty under it is more severe.

124. Whoever, with the intention of inducing or compelling the Governor General of India, or the Governor of any Province, or a Member of the Council of the Governor General of India, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor General, Governor, or Member of Council,

Assaulting Governor General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor General, Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section is an amplification of the third clause of section 121A. It punishes severely assaults, etc., made on high officers of Government.

124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Crown Representative or the Government established by law in British India,

Sedition.

or British Burma shall be punished with transportation for life or any shorter term, to which fine may be added or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression 'disaffection' includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measure of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

COMMENT.—*Ingredients.*—This section requires two essentials:—

1. Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards, His Majesty the King-Emperor or the Government.

2. Such act or attempt may be done (i) by words, either spoken or written, or (ii) by signs or (iii) by visible representation.

1. **Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards, His Majesty or Government.**—The offence does not consist in exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance great or small. Whether any disturbance or outbreak was caused by the publication of seditious articles is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within this section, and would probably fall within other sections of the Penal Code. If he tried to excite feelings of hatred or contempt towards the Government that is sufficient to make him guilty under this section.¹ The Federal Court of India has, however, held that the gist of the offence of sedition is incitement to violence: mere abusive words are not enough.² The view of the Federal Court is recently overruled by the Privy Council,³ as being opposed to the view expressed in several cases.⁴

The essence of the crime of sedition consists in the intention with which the language is used. The intention of a speaker, writer or publisher, may be inferred from the particular speech, article, or letter. The intention is gathered from the articles. The requisite intention cannot be attributed to a person if he was not aware of the contents of the seditious publication.⁵ If, on reading the articles or speeches, the reasonable and natural and probable effect of the articles or speeches on the minds of those who read them, or to whom they were addressed appears

¹ *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 528, F.C.; *B. G. Tilak*, (1908) 10 Bom. L. R. 848; *Amba Prasad*, (1897) 20 All. 55, 60, F.B.; *Luaman*, (1899) 2 Bom. L. R. 286; *Shankar*, (1910) 12 Bom. L. R. 675.

² *Nikurendu Dutt Majumdar*, [1942] F. C. R. 38.

³ *Sudashir Narayan*, (1947) 48 Bom. L. R. 526, F.C.

⁴ *Bal Gangadhar Tilak*, (1897) 22 Bom. 528, F.C.; *Basant v. Advocate General of Madras*, (1919) 43 Mad. 146, 21 Bom. L. R. 867, F.C.; *Wallace-Johnson*, [1940] A. C. 231.

⁵ *Chun Lai*, (1931) 12 Lah. 488.

to be that feelings of hatred, contempt or disaffection, would be excited towards the Government, the offence is committed.¹ In order to decide whether or not a speech constitutes an attempt to excite hatred, contempt or disaffection, it should be viewed from the standpoint of the types of persons to whom it was primarily addressed. On the one hand, their limitations, if any, have to be taken into account : on the other, the fact that the words may convey to them a literal meaning must not be lost sight of. The time and the place are also factors which should be considered.²

The section places absolutely on the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them.

'Attempts, etc.'—It is not necessary in order to bring the case within this section that it should be shewn that the attempt was successful. Attempt does not imply success. An attempt is an intentional preparatory action which fails in object—which so fails through circumstances independent of the person, who seeks its accomplishment.³ Whoever tries to excite, attempts to excite, etc., is held to come within this section. Whether the intention has achieved the result is immaterial. If the accused tried to excite hatred or contempt, the fact that he failed to do so will be no justification for him. That will be a matter to be decided in determining the sentence.⁴

The sending through the post office of a packet containing a manuscript copy of a seditious publication with a covering letter requesting the addressee to circulate it to others, when the same was intercepted by another person and never reached the addressee, amounts to an attempt to commit sedition.⁵

'Government established by law in British India.'—This expression means British rule and its representatives as such—the existing political system as distinguished from any particular set of administrators.⁶ It means the various Governments constituted by the statutes relating to the Government of India now consolidated into the Government of India Act and denotes the person or persons authorized by law to administer Executive Government in any part of British India.⁷ It includes the executive power in action and does not mean merely the constitutional framework. It includes the Provincial Government, as well as the Central Government.⁸ 'Government' does not mean the person or persons for the time being. It means the person or persons collectively, in succession, who are authorized to administer Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government because they are only individuals, and are not representatives of that abstract conception which is Government.⁹ An attempt to remove from power the Ministers in Office in any province, or any agitation for the repeal of an Act of Parliament cannot be seditious if no unlawful means were employed.¹⁰

'Swaraj' does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is 'home rule' under the

¹ *Bal G. Tilak*, (1916) 19 Bom. L. R. 211; *Suchin Das*, (1935) 63 Cal. 588.

² *L. D. Madaya*, (1923) 1 Ran. 211.

³ *Luzman*, (1899) 2 Bom. L. R. 286, 296.

⁴ *Bhaskar*, (1906) 8 Bom. L. R. 421, 439; *Luzman*, *sup.*

⁵ *Surendra Narayan Adhikary*, (1911) 30 Cal. 522.

⁶ *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 135.

⁷ *Bal G. Tilak*, (1916) 19 Bom. L. R. 211, 270; *Dhirendra Nath Sen*, [1938] 2 Cal. 672.

⁸ *Kshitreshchandra Ray Chaudhuri*, (1932) 59 Cal. 1197.

⁹ *Bhaskar*, *supra*.

¹⁰ *Dhirendra Nath Sen*, *sup.*

Government, and, therefore, incitement of members of a public meeting to exert themselves to secure 'swaraj' does not amount to sedition.¹

The Ministers of a Province are not vested with any right to exercise executive authority. They are Governor's advisers and are not "Government" within the meaning of this section.²

2. Such act or attempt may be done by words, either spoken or written, or by signs or by visible representation.—Not only the writer of seditious articles but whoever uses in any way words or printed matter for the purpose of exciting feelings of disaffection to the Government is liable under the section, whether he is the actual author or not.³

For everything that appears in his paper, the editor, printer, or publisher is as responsible as if he had written the article himself. Whoever the composer might be, whosoever wrote or caused it to be written, the person who used it for purposes of exciting disaffection is guilty of sedition.⁴ It is not sufficient for an accused person to say that what was put into his paper of a seditious character was put in during his absence and without his authority. If he did not authorize it, it is for him to prove that as a fact, because it must be within his knowledge whether any such authority was given.⁵

If he proves that he was absent and was not aware of the contents of the paper beyond the fact that he was the declared proprietor and keeper of the press, he would not be liable as the requisite intention would be wanting.⁶

'Written'.—Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose of exciting disaffection. Seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of some kind is necessary.⁷ Sending of a seditious matter by post addressed to a private individual not by name but by designation as the representative of a large body of students amounts to publication if it is opened by anybody.⁸

'Visible representation'.—Sedition does not necessarily consist of written matter: it may be evidenced by a wood-cut or engraving of any kind.⁹

Explanations 2 and 3.—Both these Explanations have a strictly defined and limited scope. They have no application unless the article in question criticises "the measures of Government" or "administrative or other action of the Government" without exciting or attempting to excite hatred, contempt or disaffection. The object of the Explanations is to protect *bona fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses. A journalist may canvass and censure the acts of Government and their policy and indeed it is his duty.¹⁰ But a publicist, a journalist, or a speaker, has no right to attribute dishonest or immoral motives to Government.¹¹ Changes in policy

¹ *Beni Bhusan Roy*, (1907) 34 Cal. 991.

² *Hemendra Prasad Ghosh*, [1939] 2 Cal. 411.

³ *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 129; *Jogendra Chunder Bose*, (1891) 19 Cal. 35, 41.

⁴ *Bhaskar*, (1906) 8 Bom. L. R. 421, 438.

⁵ *Ibid.*; *Lurman*, (1899) 2 Bom. L. R. 286; *Phanendra Nath Mitter*, (1908) 35 Cal. 945.

⁶ *Chuni Lal*, (1931) 12 Lab. 483.

⁷ *Foster*, 198.

⁸ *Suresh Chandra Sanyal*, (1912) 39 Cal. 606.

⁹ *Alexander M. Sullivan*, (1868) 11 Cox 44, 51.

¹⁰ *Dhirendra Nath Sen*, [1938] 2 Cal. 672.

¹¹ *B. G. Tilak*, (1908) 10 Bom. L. R. 848; *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 137; *Phanendra Nath Mitter*, sup.

and changes in measures are liable to criticism, and to criticise and urge objections to them is a special right of a free press in a free country. Every liberty is given to all men to express their opinions, so long as they do not misuse or abuse that power to the injury of others, including among injuries to others, injury to the State.¹ An article in a newspaper which is not an attack on the ministry, but on a proposed bill and the policy of the ministry as revealed therein, is not seditious.² Where disapprobation of measures of Government or of administrative or other actions of Government is motivated throughout by a desire to excite hatred, contempt and disaffection towards it, it is immaterial to consider whether absolute independence is advised or any form of constitution advocated.³ Where an article in a newspaper read as a whole amounted in a sense to nothing more than a censure, expressed in exaggerated, inflated and intemperate language, on a still-born bill, it was held that it did not come within this section.⁴ It is not sedition merely to criticise Government however bitterly or forcibly that may be done, or to seek its overthrow by constitutional means in order that another Government, equally constitutional, may be substituted in its place in a constitutional way. It becomes sedition only when the intention or the attempt is to induce people to cease to obey the law and to cease to uphold lawful authority.⁵

'Disapprobation.'—This means simply disapproval. It is quite possible to disapprove of a man's sentiments or action and yet to like him.⁶

Liability for extracts from other papers.—The law does not excuse the publication in newspapers of writings which are in themselves seditious libels merely because they are copied from foreign newspapers as items of news.⁷

Liability for letters of correspondents.—The editor of a newspaper is liable for unsigned seditious letters appearing in his paper.⁸

Publication of seditious exhibits.—Republication of a seditious article used as an exhibit in a case of seditious is not justifiable.⁹

125. Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

COMMENT.—This section restrains a person from making British India the focus of intrigues and enterprise for the restoration of deposed rulers or other like purposes. The fulfilment of the obligations of the State to allies and friendly Powers requires that the abetment of such schemes by its subjects whether by furnishing supplies or otherwise should be forbidden.¹⁰ "One Sovereign power is

¹ *Bhaskar*, (1900) 8 Bom. L. R. 421, 441.

² *Dhirendra Nath Sen*, [1938] 2 Cal. 672.

³ "India in Bondage", (1930) 57 Cal. 1217.

⁴ *Dhirendra Nath Sen*, *sup.*

⁵ *Bhagwati Charan Shukla v. Provincial Government, Central Provinces and Berar*, [1946] Nag. 865.

⁶ *Jogendra Chunder Bose*, (1891) 19 Cal. 35, 44; *Bal Gangadhar Tilak*, (1897) 22 Bom. 112, 137.

⁷ *Alexander M. Sullivan*, (1868) 11 Cox 44.

⁸ *Apurba Krishna Bose*, (1907) 35 Cal. 141.

⁹ *Ibid.*

¹⁰ *M. & M.* 105.

bound to respect the subjects and the rights of all other sovereign powers outside its own territory."¹

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.

Committing depredation on territories of Power at peace with the Queen.

COMMENT.—The preceding section provides for waging war against any Asiatic Power in alliance with the King-Emperor: this section prevents the commission of depredation or plunder on territories of States at peace with the King-Emperor. The scope of this section is much wider than the preceding section, for it applies to a Power which may or may not be Asiatic.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

COMMENT.—This section applies to those persons who knowingly receive any property obtained by waging war with a Power at peace with the King-Emperor or by committing depredation on its territories.

128. Whoever, being a public servant and having the custody of any State prisoner¹ or prisoner of war,² voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant voluntarily allowing prisoner of State or war to escape.

COMMENT.—This section and s. 225A provide for one kind of offence. In both the sections the public servant who has the custody of the prisoner is punished if he voluntarily allows such prisoner to escape. In this section the prisoner must be a State prisoner or a prisoner of war: under s. 225A the prisoner may be an ordinary criminal. The offence under this section is thus an aggravated form of an offence under s. 225A.

1. 'State prisoner' is one whose confinement is necessary in order to preserve tranquillity in the territory of any Indian State entitled to protection, or the security of the British dominions from foreign hostility or from internal commotion, and who has been confined by the order of the Governor-General-in-Council.²

2. 'Prisoner of war' is one who in war is taken in arms. Those who are not in arms, or who being in arms submit and surrender themselves, are not to be slain but to be made prisoners. But it seems those only are prisoners of war who are taken in arms.³

¹ *Jameson*, [1896] 2 Q. B. 425, 430.

1819.

² *Beng. Reg. III of 1818, Bom. Reg. XXV of 1817, Mad. Reg. II of*

³ *M. & M. 107.*

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Public servant negligently suffering such prisoner to escape.

COMMENT.—The offence under this section is like the one provided in s. 128. Under it the escape of the prisoner should be owing to the *negligence* of the public servant. Section 128 punishes a public servant who *voluntarily* allows a State prisoner to escape. Section 228 punishes the escape of an ordinary prisoner under similar circumstances.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape of, rescuing or harbouring such prisoner.

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

COMMENT.—This section uses words more extensive than those in the two preceding ones which contemplate an escape only from some prison or actual place of custody. Again in the last two sections the offender is a public servant: under this section he may be any person. The scope of this section is much narrower than s. 129. This section requires that the rescue or assistance should be given “knowingly.”

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE.

131. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting mutiny, or attempting to seduce a soldier sailor or airman from his duty.

Explanation.—In this section the words “officer,” “soldier,” “sailor” and “airman” include any person subject to the Army Act, the Indian

Army Act, 1911, the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1984, the Air Force Act or the Indian Air Force Act, 1982, as the case may be.

COMMENT.—The first part of this section relates to the offence of abetting mutiny. The offence contemplated is an abetment which is not followed by actual mutiny, or which, supposing actual mutiny follows, is not the cause of that mutiny.

The offence of 'mutiny' consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the Government of civil authorities rather than against military superiors seem also to constitute mutiny.¹

132. Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of mutiny, if mutiny is committed in consequence thereof.

COMMENT.—This section punishes the abetment of mutiny when mutiny is committed in consequence of that abetment. It, therefore, prescribes enhanced penalty.

133. Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.

COMMENT.—This section punishes abetment of an assault which is not committed. The next section punishes similar abetment where the offence is committed.

134. Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

COMMENT.—This section punishes the abetment of an assault when such assault is committed in consequence of that abetment. It stands in the same relation to s. 133 just as s. 132 does to s. 131.

135. Whoever abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, shall be punished with imprisonment of

Abetment of desertion of soldier, sailor or airman.

¹ M. & M. 112.

either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—The desertion abetted under this section need not take place. Mere abetment is made punishable.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring deserter.
Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

COMMENT.—A person harbouring a deserter is an 'accessory after the fact'. The gist of the offence is concealment of a deserter to prevent his apprehension. Exception is made only in the case of a wife.

The word 'harbour' is defined in s. 52A.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Deserter concealed on board merchant vessel through negligence of master.
COMMENT. — This section punishes the master or person in charge of a merchant ship on board of which a deserter has concealed himself. The master is liable even though he is ignorant of such concealment.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by soldier, sailor or airman.
COMMENT.—In this section it is expressed as part of the definition of the offence that the abettor knows the quality of the act abetted, that is, he knows it to be an act of insubordination.

138A. [Application of foregoing section to the Indian Marine service.]
Repealed by s. 2 and Sch. of Act XXXV of 1934.

139. No person subject to the Army Act, the Indian Army Act, 1911, the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Indian Air Force Act, 1932, is subject to

Persons subject to certain Acts.

punishment under this Code for any of the offences defined in this Chapter.

140. Whoever, not being a soldier, sailor or airman in the Military, Naval or Air service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, sailor or airman, with the intention that it may be believed that he is such a soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—The gist of the offence herein made penal is the intention of the accused wearing the dress of a soldier for the purpose of inducing others to believe that he is in service at the present time. Merely wearing a soldier's garb without the specific intention is no offence. Cast-off uniforms of soldiers are worn by many men. Actors put on different military uniforms.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILITY.

The offences in this Chapter may be classified in the following four groups:—

I. Unlawful assembly.

- (1) Being a member of an unlawful assembly (ss. 141, 142, 143).
- (2) Joining an unlawful assembly armed with deadly weapons (s. 144).
- (3) Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (s. 145).
- Hiring of persons to join an unlawful assembly (s. 150).
- (5) Harboursing persons hired for an unlawful assembly (s. 157).
- (6) Being hired to take part in an unlawful assembly (s. 158).

II. Rioting (ss. 146, 147).

- (1) Rioting with deadly weapons (s. 148).
- (2) Assaulting or obstructing a public servant in the suppression of a riot (s. 152).
- (3) Wantonly giving provocation with intent to cause riot (s. 153).
- (4) Liability of the owner or occupier of land on which an unlawful assembly is held or a riot is committed (s. 154).
- (5) Liability of the person for whose benefit a riot is committed (s. 155).
- (6) Liability of the agent of owner or occupier for whose benefit a riot is committed (s. 156).

III. Promoting enmity between different classes (s. 153A).

IV. Affray (ss. 159, 160).

141. An assembly of five or more¹ persons is designated an “unlawful assembly,” if the common object² of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the

Central or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process ;
or

Third.—To commit any mischief or criminal trespass, or other offences ; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.

142. Whoever, being aware of facts which render any assembly ^{being member of} an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

143. Whoever is a member of an unlawful assembly, shall be punished ^{Punishment.} with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—The underlying principle of s. 141 is that law discourages tumultuous assemblage of men to preserve the public peace. Section 141 defines what an 'unlawful assembly' is. Section 142 gives the connotations of a member of an unlawful assembly. Section 143 punishes tumultuous assemblies as they endanger public peace. It does not require that the purpose of the unlawful assembly should have been fulfilled.

The essence of an offence under this section is the combination of several persons, united in the purpose of committing a criminal offence, and the consensu of purpose is itself an offence distinct from the criminal offence which these persons agree and intend to commit.¹

Ingredients.—An 'unlawful assembly' is an assembly of five or more persons, if their common object is

1^o To overawe by criminal force

(a) the Central Government, or

(b) the Provincial Government, or

(c) the Legislature, or

(d) any public servant in the exercise of lawful power.

2. To resist the execution of law or legal process.

3^o To commit mischief, criminal trespass.

¹ *Matti Venkanna*, (1922) 46 Mad. 257.

4. By criminal force

- (a) to take or obtain possession of any property, or
- (b) to deprive any person of any incorporeal right, or
- (c) to enforce any right or supposed right.

5. By criminal force to compel any person

- (a) to do what he is not legally bound to do, or
- (b) to omit what he is legally entitled to do.

1. 'Five or more.'—The assembly must consist of five more persons having one of the five specified objects as their 'common object.'¹ There must be more than four persons having the common object before the constructive guilt under this section can arise. Even if a fifth person was present and did nothing to show that he shared the common object of the others, he would not become guilty by merely remaining in an unlawful assembly.²

An unlawful assembly, according to English law, is an assembly of three or more persons for purpose forbidden by law.

2. 'Common object.'—The essence of the offence is the common object of the persons forming the assembly. Whether the object is in their minds when they come together or whether it occurs to them afterwards, is not material. But it is necessary that the object should be common to the persons who compose the assembly, that is, they should all be aware of it and concur in it. It seems also that there must be some present and immediate purpose of carrying into effect the common object; and that a meeting for deliberation only, and to arrange plans for future action, is not an 'unlawful assembly.'³

First clause.—The third clause of s. 121A provides for a conspiracy to overawe the Central or Provincial Government.

Second clause.—Resistance to some law, or legal process, connotes some overt act, and mere words, when there is no intention of carrying them into effect, are not sufficient to prove an intention to resist.⁴ When an order is lawfully made under the provisions of a statute, that order is law, and resistance to the execution of that law is an offence.⁵

Under this clause the act resisted must be a legal act. Where a number of persons resisted an attempt to search a house which was being made by officers, who had not the written order investing them with the power to do so, it was held that the persons resisting the attempted search were not guilty of this offence.⁶

Third clause.—This clause specifies only two offences, viz., mischief and criminal trespass, but the words 'or other offence' seem to denote that all offences are included though only two are enumerated in a haphazard way.

Fourth clause.—The act falling within the purview of this clause is made punishable owing to the injurious consequences which it is likely to cause to the public peace. This clause does not take away the right of private defence of property. It does not effect cl. 2 of s. 103, which allows a person to recover the property carried away by theft. It is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim.⁷

The expression 'right or supposed right' would seem to make a division into

¹ *Koura Khan*, (1868) P. R. No. 24 of 1868.

² *Gajraj Singh*, (1946) 21 Luck. 527.

³ M. & M. 119.

⁴ *Abdul Hamid*, (1922) 2 Pat. 184.

⁵ *Ramenruchandra Ray*, (1981) 58 Cal. 1303.

⁶ *Narain*, (1875) 7 N. W. P. 209.

⁷ *Gulam Hoosein*, (1900) 11 Bom. L. R. 849.

(1) rights in actual enjoyment when interfered with, (2) rights claimed though not in actual enjoyment when interfered with.¹ A party cannot be said 'to enforce any right' where he is in undoubted possession of the land upon which an attack has been made and he defends that possession. In that case the right of private defence of property would arise. If, on the other hand, there was a real doubt whether the land belonged to one party or the other, then if either party used force, that would amount to enforcing a right and there would be no right of private defence of property.² The phrase 'to enforce a right' can only apply when the party claiming the right has not possession over the subject of the right, and therein lies the distinction between enforcing a right and maintaining a right.³ The words 'to enforce a right or a supposed right' show that it is perfectly immaterial whether the act which one seeks to prevent by the use of criminal force or show of criminal force is legal or illegal, the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten the public peace.⁴

If persons are rightfully in possession of land, and find it necessary to protect themselves from aggression, they are justified in taking precautions and using such force as is necessary, to prevent the aggression.⁵ Where five or more persons assemble for maintaining by force or show of force a right which they *bona fide* believe they possess, and not for enforcing by such force or show of force a right or supposed right of theirs, they do not constitute an unlawful assembly.⁶ But when a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate, by unlawful force, their rights or supposed rights, no question of self-defence arises. Neither side is trying to protect itself, but each side is trying to get the better of the other.⁷

CASE.—Violation of terms of license.—Where a license had been taken out for a procession but the processionists violated the conditions of the license which prescribed the route and the limit up to which the procession was permitted to proceed, and on being directed by the police and the Magistrate not to do so, a group of the processionists made a determined effort to break through the police cordon, it was held that the latter constituted an unlawful assembly.⁸

Fifth clause.—This clause is very comprehensive and applies to all the rights a man can possess, whether they concern the enjoyment of property or not. There is no reference to 'any right or supposed right' as in the preceding clause.

Explanation.—An assembly which is lawful in its inception may become unlawful by the subsequent acts of its members.⁹ It may turn unlawful all of a sudden and without previous concert among its members.¹⁰ But illegal acts of one or two members, not acquiesced in by the others, do not change the character of the assembly.¹¹

A lawful assembly does not become unlawful merely because the members know

¹ *Ganouri Lal Das*, (1889) 16 Cal. 206, 219.

² *Mehdi*, [1941] Lah. 267.

³ *Ramnandan Prosad Singh*, (1913) 17 C. W. N. 1132.

⁴ *Tirukadu*, (1890) 14 Mad. 126, 130.

⁵ *Narsang Pathabhai*, (1890) 14 Bom. 141; *Pachkauri*, (1897) 24 Cal. 686; *Fateh Singh*, (1918) 41 Cal. 48.

⁶ *Veerabhadra Pillai*, (1927) 51 Mad. 91.

⁷ *Prag Dai*, (1898) 20 All. 459; *Kubiruddin*, (1908) 35 Cal. 368; *Maniruddin*, (1908) 35 Cal. 384.

⁸ *Rambabu*, (1945) 25 Pat. 125.

⁹ *Khemec Singh*, (1864) 1 W. R. (Cr.) 18; *Lokenath Kar*, (1872) 18 W. R. (Cr.) 2.

¹⁰ *Ragho Singh*, (1902) 6 C. W. N. 507.

¹¹ *Dinabundo Rai*, (1868) 9 W. R. (Cr.) 19.

that their assembly would be opposed and a breach of the peace would be committed.¹

Although individuals may, in the first instance, have associated themselves with a mob from motives perfectly innocent, nevertheless, if the mob is or becomes an unlawful assembly and the individuals in question take part in its proceedings, they will be liable as members of an unlawful assembly.² Where certain persons had assembled to prevent a procession by force from passing over a certain street, and they were ordered by the police to disperse but neglected to do so, it was held that they were guilty of the offence of being members of an unlawful assembly.³

Being member of unlawful assembly.—Section 142 shows that it is sufficient for the offence of riot to be proved against an individual that that individual should remain in an unlawful assembly as soon as he is aware that the assembly is unlawful. The word “continues” in the section merely means physical presence as a member of the unlawful assembly, that is, to be physically present in the crowd.⁴

CASES.—**Enforcement of right by use of criminal force.**—**Dispute regarding possession of land.**—Where there was a dispute of long standing between the accused and certain other parties regarding possession of certain land, and the accused went to sow the land with indigo, accompanied by a body of men armed with sticks and who kept off the opposite party by brandishing their weapons while the land was sowed, it was held that they were guilty of this offence.⁵ Where the accused, who were in possession of the disputed land, went upon it in a large body armed with sticks, prepared in anticipation of a fight, and were reaping the paddy grown by them, when the complainant’s party came up and attempted to cut the same, whereupon a fight ensued and one man was seriously wounded and died subsequently, it was held that the common object was not to enforce a right but to maintain undisturbed the actual enjoyment of a right and that the assembly was not therefore unlawful.⁶

144. Whoever, being armed with any deadly weapon, or with any thing which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining unlawful assembly armed with deadly weapon.

COMMENT.—This is an aggravated form of the offence mentioned in the last section. The risk to the public tranquillity is aggravated by the intention of using force evinced by carrying arms. The enhanced punishment under this section can only be inflicted on that member of an unlawful assembly who uses a weapon of offence.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.

¹ *Beatty v. Gillbanks*, (1882) 9 Q.B.D. 308.

² *Periapien*, (1883) 1 Weir 66.

³ *Tirakadu*, (1890) 14 Mad. 126.

⁴ *Sheo Dayal*, (1933) 55 All. 669.

⁵ *Peary Mohun Sircar*, (1888) 9 Cal. 639.

⁶ *Silajit Mukho*, (1909) 86 Cal. 865.

COMMENT.—This section is connected with s. 151, *infra*. Section 168 of the Penal Code provides for the disobedience of any lawful order promulgated by a public servant. Sections 145 and 151 deal with special cases as the disobedience may cause serious breach of the peace. As to the powers of the police to disperse an unlawful assembly, see s. 127, Criminal Procedure Code.

146. Whenever force or violence¹ is used by an unlawful assembly, rioting. or by any member thereof, in prosecution of the common object² of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—A riot is an unlawful assembly in a particular state of activity, which activity is accompanied by the use of force or violence. *It is only the use of force that distinguishes rioting from an unlawful assembly.*³

Ingredients.—The following are the essentials of the offence of rioting:—

(1) That the accused persons, being five or more in number, formed an unlawful assembly.

(2) That they were animated by a common object.

(3) That force or violence was used by the unlawful assembly or any member of it in prosecution of the common object.

1. 'Force or violence.'—The word 'violence' is not restricted to force used against persons only, but extends also to force against inanimate objects.⁴

The use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful, constitutes rioting.⁵ Where a member of an unlawful assembly in prosecution of the common object of the assembly throws down a man and then causes him bodily hurt, the offence of rioting under this section is complete as soon as the man is thrown down by using force and the hurts subsequently caused would come under s. 323 or s. 325. Section 71 has no application to such a case and separate sentences under this section and s. 323 are not illegal.⁶

2. 'In prosecution of the common object.'—Section 141 indicates what objects are deemed unlawful. If the common object of an assembly is not illegal, it is not rioting even if force is used by any member of that assembly.⁷

Acts done by some members of an unlawful assembly outside the common object of the assembly or of such a nature as the members of the assembly could have known to be likely to be committed in prosecution of that object are only chargeable against the actual perpetrators of those acts.⁸

Resistance to illegal warrant.—Resistance to the execution of an illegal warrant within reasonable bounds does not amount to rioting; but when the right of resistance is exceeded and a severe injury, not called for, is inflicted, the person who inflicts the injury may be convicted of such injury.⁹

¹ *Raml*, (1888) P. R. No. 4 of 1888.

² *Samaruddi*, (1912) 40 Cal. 867.

³ *Koura Khan*, (1868) P. R. No.

31 of 1868; *Ramadeen Doobay*, (1876)

26 W. R. (Cr.) 6.

⁴ *Parmeshwar*, (1940) 16 Luck. 51.

⁵ *Jagarnath Mandhata*, (1897) 1 C.

W. N. 233; *Parmeshwar Singh*, (1899)

4 C. W. N. 345.

⁶ *Agra*, (1914) P. R. No. 37 of 1914.

⁷ *Uma Charan Singh*, (1901) 29

Cal. 244.

Sudden quarrel.—If a number of persons assembled for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit 'riot' in the legal sense of the word.¹

Private defence.—There can be no right of private defence, where the riot is premeditated on both sides.² Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence.³ Persons exercising their lawful rights are not members of an unlawful assembly, nor can the assembly become unlawful by their repelling an attack made on them by persons who had no right to obstruct them, nor by exceeding lawful use of their right of private defence. In such a case each is liable only for his individual acts done in excess of such right.⁴

CASES.—Where several Hindus, acting in concert, forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing 'wrongful gain' to themselves or 'wrongful loss' to the owner of the cattle, but for the purpose of preventing the killing of the cows, it was held that they were guilty of rioting.⁵ The party of the accused accompanied by R went armed with sticks to fish in a tank in which R had a two annas share. The complainant who, with some other co-sharers, represented an eleven annas interest in the tank went there, with some of those co-sharers, to protest on the ground that the accused had no share or interest in the tank. A fight ensued in the course of which some of the complainant's party received slight injuries. It was held that the accused were guilty of rioting and voluntarily causing hurt.⁶ There was a dispute about the possession of a certain land between the complainant and the accused. The complainant dug a well with a view to cultivate the said land. The accused forcibly entered on the land and damaged the well. It was held that the accused were guilty under this section as an accused person is not entitled to go upon his own land and by violence destroy the property of the complainant, even though a trespasser.

Not unlawful assembly.—The accused receiving information that the complainant's party were about to take forcible possession of a plot of their land, collected a number of men, some of whom were armed, and went to the land. While they were engaged in ploughing, the complainant's party came up and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt. It was held that the accused were justified in taking such precautions as they thought were required to prevent the aggression, and that they were not members of an unlawful assembly.⁷

Separate trials.—Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together as they cannot have one common object within the meaning of s. 141; each party should be tried separately.⁸

¹ *Elhajah Noorul Hossein v. Fabre-Tonnerre*, (1875) 24 W. R. 26.

² *Prag Dal*, (1898) 20 All. 459.

³ *Kalee Bipuree*, (1878) 1 C. L. R. 521.

⁴ *Kunja Bhuiya*, (1912) 39 Cal. 896.

⁵ *Raghunath Rai*, (1892) 15 All. 22.

⁶ *Anand Pandit v. Madhusudan Mandal*, (1899) 26 Cal. 574; *Ganouri Lal Das*, (1889) 16 Cal. 208; *Jairam*

Mahlon, (1907) 35 Cal. 108; *Alladad*, (1869) P. R. No. 1 of 1870.

⁷ *Abdul Hussain*, [1943] Kar. 7.

⁸ *Pachkauri*, (1897) 24 Cal. 686.

Fateh Singh, (1913) 41 Cal. 43.

⁹ *Hossein Buksh*, (1890) 6 Cal. 96; *Bachu Mullah v. Sia Ram Singh*, (1886) 14 Cal. 358; *Chandra Bhuiya*, (1892) 20 Cal. 537.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Rioting, armed with deadly weapon.
COMMENT.—Similar to s. 144 this section is an aggravated form of the offence mentioned in the previous section. Enhanced punishment is provided if a person is armed with a deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object¹ of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence..

Every member of unlawful assembly guilty of offence committed in prosecution of common object.
COMMENT.—The object of this section is to make clear that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object.²

The word "offence" is confined to offences under the Code and does not include offences under special Acts.³

Ingredients.—The section has the following essentials.—

1. Commission of an offence by any member of an unlawful assembly.
2. Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed.

Sections 34 and 149 – Section 149 is wider than s. 34. In it the joint liability is founded on 'common object'; in s. 34, on 'common intention.' Both sections deal with liability for constructive criminality, i.e., liability, for an offence not committed by the person charged. "Section 149... creates a specific offence and deals with the punishment of that offence alone. It postulates an assembly of five or more persons having a common object—namely, one of those named in s. 141: *Reg. v. Sabid Ali*⁴—and then the doing of acts by members of it in prosecution of that object. There is a difference between object and intention, for, though their object is common, the intentions of the several members may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action, which is the leading feature of s. 34, is replaced in s. 149 by membership of the assembly at the time of the committing of the offence. Both sections deal with combinations of persons, who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap, but s. 149 cannot at any rate relegate s. 34 to the position of dealing only with joint action by the commission of identically similar criminal acts; a kind of case which is not in itself deserving of separate treatment

¹ *Theethumalai Gounder*, (1924) 47 Mad. 746, F.B.

² (1873) 11 Beng. L. R. 347, 359, 20 W. R. (Cr.) 5.

³ *Dukhan Das*, (1943) 23 Pat. 139.

at all."¹ Section 34 of the Penal Code refers to cases in which several persons both do an act and intend to do that act: it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases s. 149 of the Code may be applicable but s. 34 is not.² On the other hand if five or more persons both do an act and intend to do it, both s. 34 and s. 149 may apply, since the term "member" in the singular includes the plural also (s. 9).

Scope.—This section is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. It is divided into two parts: (1) an offence committed by a member of an unlawful assembly in prosecution of the common object of that assembly; and (2) an offence such as the members of that assembly knew to be likely to be committed in prosecution of that object. In order to bring a case within the provision of this section the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though not committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object.³ The section applies equally in cases where offences are committed by single members of the assembly and in cases where offences are committed by two or more members of the assembly acting in furtherance of a common intention.⁴

Once the Court can find that an offence has been committed by some member or members of an unlawful assembly in prosecution of the common object, then whether the principal offender has been convicted for that offence or not, upon the plain wording of this section the other members may be constructively convicted of that offence, provided they are found to have had the necessary intention or knowledge. It is not correct to say that when a member of an unlawful assembly is to be found constructively guilty of an offence under this section, it must be the same offence of which the principal is convicted and not some other offence.⁵

Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of this section may be different on different members of the same unlawful assembly.⁶

1. 'In prosecution of the common object.'—This phrase means that the offence committed was immediately connected with the common object of the unlawful assembly, of which the accused were members. The act must be one which must have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. Where the common object of the unlawful assembly was to beat the men of the opposite party and one of them thrust a spear in the abdomen of a member of the opposite party and killed him and his act was unpremeditated and not contemplated by any member of the un-

¹ *Barendra Kumar Ghosh*, (1924) 52 I. A. 40, 52, 27 Bom. L. R. 148, 52 Cal. 197.

² *Aniruddha Mana*, (1924) 20 Cr. L. J. 827, 829.

³ *Sabed Ali*, (1873) 20 W. R. (Cr.) 5, 11 Beng. L. R. 347; *Krishnarao*,

(1908) 5 Bom. L. R. 1023; *Fatmaya*, [1942] Lah. 470.

⁴ *Legal Remembrancer, Bengal v. Golok Tikadar*, [1943] 1 Cal. 181.

⁵ *U. S. N. Singh*, (1940) 25 Pat. 215.

⁶ *Jahiruddin*, (1894) 22 Cal. 306.

lawful assembly, the other members of the assembly could not be held guilty of murder.¹

In cases of rioting and hurt, where this section is applied, s. 71 must apply though separate convictions may be recorded for these separate offences, separate sentences should not be passed.²

CASES.—Prosecution of common object.—Where a small compact body of men armed with clubs, and headed by a man carrying a gun, endeavoured to take forcible possession of certain lands, and one of the opponents was shot by their leader, it was held that they were all guilty of murder.³

No common object.—A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. It was held that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under this section, be made liable for the subsequent murder.⁴ Where a number of persons went together to eject a man from a piece of land, the title of which was in dispute, and upon a vigorous resistance being made, one of the party, who was armed with a gun, fired at and killed the resisting person, it was held that he was guilty of murder, but that the other members of the unlawful assembly were not guilty of murder under this section as the act of killing was not the common object of the assembly, or "likely to be committed in the prosecution of that object."⁵

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring, or conniving at hiring, of persons to join unlawful assembly.

COMMENT.—This section brings within the reach of the law those who are really the originators and instigators of the offences committed by hired persons. It deals with the case of those who are neither abettors nor participators of the offence committed by an unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.

Explanation.—If the assembly is an unlawful assembly within the

¹ *Ragunandan*, (1934) 10 Luck. 320.

⁴ *Kabil Caze*, (1869) 3 Beng. L. R. (A. Cr. J.) 1.

² *Haft*, [1943] Kar. 132.

³ *Sabir Ali*, (1873) 20 W. R. (Cr.).

Hari Singh, (1878) 8 C. L. R. 40. 5, 11 Beng. L. R. 347.

meaning of section 141, the offender will be punishable under section 145.

COMMENT.—Section 145 punishes the continuance in an unlawful assembly after it has been commanded to disperse. In this section the assembly need not be an 'unlawful assembly,' but if it is likely to cause a disturbance of the public peace, then joining or continuing in such assembly after it has been commanded to disperse is punishable. Section 127 of the Criminal Procedure Code confers on a Magistrate and an officer in charge of a police-station the power to disperse an unlawful assembly.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assaulting or obstructing public servant when suppressing riot, etc.

COMMENT.—The last section punished disobedience to the order of a public servant commanding an assembly to disperse. This section punishes more severely persons who assault a public servant endeavouring to disperse an unlawful assembly. It is intended to prevent the use of force on a public servant in order to prevent him from discharging his duty.

153. Whoever malignantly,¹ or wantonly,² by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both. •

Wantonly giving provocation with intent to cause riot—

if rioting be committed;

if not committed.

COMMENT.—A person, who maliciously or recklessly gives provocation to another by doing an illegal act knowing that such provocation will incite the other to rioting, is punishable under this section. The offence under this section involves some act of origination of a riot by doing an illegal act infuriating to the feelings of those who ultimately come to riot. The expression "gives provocation" connotes such idea. This section is intended to apply to such provocative words or acts as do not amount directly to instigation or abetment.¹ The section is divided into two parts. If rioting is committed the punishment is more severe.

1. 'Malignantly' implies a sort of general malice.² The adverbs 'maliciously' and 'malignantly' are synonymous. Malice is not, as in ordinary speech, only

¹ *Ahmed Husham*, (1932) 35 Bom. L. R. 240, 57 Bom. 329.

² *Kahanji*, (1898) 18 Bom. 758, 775.

an expression of hatred or ill-will to an individual, but means an unlawful act done intentionally without just cause or excuse.¹ Malignant means extreme malevolence or enmity; violently hostile or harmful.

2. 'Wantonly' means recklessly, thoughtlessly, without regard for right or consequences. This word gives to the offence contained in this section a far larger, vaguer and more comprehensive scope, than would be implied by the word 'malignantly' standing alone. It occurs only in this section of the Code, while the word 'malignantly' occurs once again in s. 270.

CASES.—Where the accused wrote a pamphlet in praise of a person who was opposed to the High Priest of the Borah community in certain matters, but his real intention appeared to be to throw a deep insult at the head of the High Priest an insult which was likely to inflame the feelings of the followers of the High Priest and to lead to riot, it was held that he was guilty under this section.² Where a bride and bridegroom belonging to depressed classes rode in palanquins through a village in spite of the protest of high caste Hindus, it was held that this was not an illegal act for which they could be convicted under this section.³

153A. Whoever by words, either spoken or written, or by signs, ^{Promoting enmity between classes.} or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes¹ of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

(COMMENT.—This section supplements the law of sedition. It punishes persons who promote feelings of enmity or hatred between different classes of His Majesty's subjects, by words, signs, or visible representations.

Scope.—Adverse criticism, however pungent, misdirected or unjustified against a Government or Ministry, does not fall within the purview of this section. An attack on a Ministry is not tantamount to attacking the community from which that Ministry is wholly or principally drawn.⁴

1. 'Promotes or attempts to promote feelings of enmity or hatred between different classes.'—There must either be the intention to promote such feelings, or such feelings should be promoted as the result of words spoken or written. The words 'promotes or tends to promote feelings of enmity' are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings, and, if it is no part of his purpose, the mere circumstance that there may be tendency is not sufficient.⁵ Again, feelings of enmity and hatred should be aroused between two classes of His Majesty's subjects, that is to say, between two sections of the people

¹ *Bromage v. Prosser*, (1825) 4 B. & C. 247.

² *Rahimatali Mahomedalli*, (1919) 22 Bom. L. R. 166.

³ *Jasmani*, (1906) 58 All. 934.

⁴ *Ram*, [1945] Kar. 81.

⁵ *Ibid.*

which can be classified as two well-defined groups, opposed to each other, e. g., Europeans and Indians,¹ Hindus and Mahomedans, rich and poor, high caste and the low caste people, landlords and tenants, King and subjects, oppressor and the oppressed.² The word 'classes' includes any definite and ascertainable class of His Majesty's subjects. Capitalists do not constitute a class within the meaning of this section.³ The classes referred to in this section are mutually exclusive. To bring any body of persons within the description of a "class" of His Majesty's subjects, the body of persons must possess a certain degree of importance numerically, and must be ascertained with certainty and distinguished from any other class. Every group of persons cannot be designated as a class.⁴ The "classes" contemplated must be not merely clearly defined and separable but also numerous. A small and limited group of Zamindars cannot be regarded as constituting a "class."⁵ A vague, indefinite and nameless body, even though given one name, may not in certain circumstances be considered as a class by itself, particularly if individuals overlap indiscriminately. At the same time, however, it is not necessary that the classes should be so distinct and separate as to make it always easy to put an individual in one class or the other. The section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but only such writings as directly promote feelings of hatred or enmity between classes. But if a publication advocates forcible overthrow of all existing social conditions, and aims at promoting class hatred and enmity, it comes under the purview of this section.⁶

Where an article in a newspaper bears a meaning that it is calculated to produce hatred and enmity between two classes, the natural inference from the publication of such an article is that the person who published it had the malicious intention that it should produce such hatred and enmity.⁷ A Hindu, who ridicules the Prophet of the Mahomedans not out of any eccentricity but in the prosecution of a propaganda started by a class of persons who are not Mahomedans, promotes feelings of enmity and hatred between Hindus and Mahomedans, and is liable to punishment under this section.⁸

Explanation.—Intention is the gist of the offence under this section.⁹ The Explanation requires honesty and absence of malicious intention. It does not amount to an offence within the meaning of the section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects. The section is never intended to apply to the case of the honest agitator, whose primary object is to secure redress of certain wrongs, real or fancied, and who is not actuated by the base mentality of a mere mischief-monger.¹⁰

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such

Owner or occupier of land on which an unlawful assembly is held.

¹ *Jaswant Rai*, (1907) P. R. No. 10 of 1907; *Joy Chandra Sarkur*, (1910) 38 Cal. 214.

² *Gautam*, [1937] All. 69.

³ *Maniben Kara*, (1932) 34 Bom. L. R. 1642; *Nepal Chandra Bhatta-charjya*, [1939] 1 Cal. 299.

⁴ *Narayan Vasudev Phadke*, (1940) 42 Bom. L. R. 861.

⁵ *Banomali Maharana*, (1943) 22 Pat. 48.

⁶ *Gautam*, [1937] All. 69.

⁷ *Kanchanlal Chunilal*, (1930) 32 Bom. L. R. 585.

⁸ *Shib Sharma*, (1941) 16 Luck. 674.

⁹ *Ram*, [1945] Kur. 31.

¹⁰ *Banomali Maharana*, *sup.*

land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

COMMENT.—Many duties of the police are by law imposed on landholders. The present section proceeds apparently upon a presumption that, in addition to any such duty, the owner or occupier of land is cognizant in a peculiar way of the designs of those who assemble on his land, and is able not only to give the police notice, but also to prevent and to disperse and suppress the assembly.¹

Section 45 of the Code of Criminal Procedure casts upon the owners and occupiers of land the duty of preventing a riot on their lands.

Knowledge, on the part of the owner or occupier of the land, of the acts or intentions of the agent, is not an essential element of an offence under this section, and he may be convicted under it though he may be in entire ignorance of the acts of his agent or manager.²

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

COMMENT.—Under the preceding section the owner of land is punishable for the taking place of an unlawful assembly or riot on his land. This section requires that the unlawful assembly or riot should take place in the interest of the owner or any person claiming interest in the land. The section, therefore, imposes unlimited fine. The preceding section refers to an unlawful assembly, as well as a riot; this section refers to riot only.

The principle on which this and the following sections proceed is to subject to fine all persons in whose interest a riot is committed and the agents of such persons, unless it can be shown that they did what they lawfully could do to prevent the offence.

¹ M. & M. 128.

² Kuri Zeamuddin Ahmed, (1901)

28 Cal. 504; Payag Singh, (1890) 12 All. 550.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of agent of owner or occupier for whose benefit riot is committed.

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

COMMENT.—The provisions of the last two sections are made applicable by this section to the agent or manager of the owner or occupier of land.

157. Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged, or employed or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring persons hired for an unlawful assembly.

COMMENT.—Section 150 makes the hiring of persons to join an unlawful assembly punishable, whereas this section makes punishable the harbouring of such hired persons. It has a wider application.

The section clearly refers to some unlawful assembly in the future and provides for an occurrence which may happen, not which has happened. An act of harbouring a person, with the knowledge that, in some time past, he had joined or was likely to have been a member of an unlawful assembly, is not an offence under this section.¹

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

Being hired to take part in an unlawful assembly or riot;

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

or to go armed.

COMMENT.—This section is intended to punish those persons who hire themselves out as members of an unlawful assembly or assist any such members. It is divided into two parts. Higher penalty is awarded where the accused is armed with a deadly weapon.

159. When two or more persons,¹ by fighting in a public place,² disturb the public peace,³ they are said to “commit an affray.”

Affray. **160.** Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Punishment for committing affray.

COMMENT.—The word ‘affray’ is derived from the French word *affraier*, to terrify, and in a legal sense it is taken for a public offence to the terror of the people. The essence of the offence consists in the terror it is likely to cause to the public.

Ingredients.—This section requires three things—

1. Two or more persons must fight.
2. They must fight in a public place.
3. They must disturb the public peace.

1. ‘Two or more persons.’—An affray requires two persons at the least. An unlawful assembly requires five.

2. ‘Fighting in a public place.’—‘Public place’ is a place where the public go, no matter whether they have a right to go or not. Many shows are exhibited to the public on private property, yet they are frequented by the public—the public go there.¹ It is obvious that what is a public place may vary from time to time, and what the Court has to consider is, was a particular place at the time public?—a place where the public undoubtedly were.² An omnibus,³ a railway platform,⁴ a public urinal,⁵ and a goods yard of a railway station,⁶ are public places. A private *chabutra* adjoining a public thoroughfare,⁷ a railway station and platform at a time when no train is due, except a goods train,⁸ are not public places.

No quarrelsome or threatening words without exchange of blows will amount to an affray. The offence postulates the commission of a definite assault or a breach of the peace.

In a public place two persons attacked and overpowered another person, who merely defended himself. It was held that the two persons were guilty of affray, as there was a “fighting” in a public place, notwithstanding the fact that the third person only defended himself in exercise of his right of private defence.⁹ Where two brothers were found quarrelling and abusing each other on a public road in a town and a large crowd gathered and the traffic was temporarily suspended, but no actual fight took place, it was held that no affray was committed.¹⁰

3. ‘Disturb the public peace.’—An affray is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance.

¹ *Wellard*, (1884) 14 Q. B. D. 63, 66, 67.

² Per Coleridge, C. J., in *ibid.*, p. 66.

³ *Holmes*, (1853) 3 C. & K. 360.

⁴ *Davis*, (1857) 26 L. J. Ex. 393.

⁵ *Harris*, (1871) L. R. 1 C. C. R. 282.

⁶ *Cowaji v. G. I. P. Ry.*, (1902) 4 Bom. L. R. 290, 26 Bom. 609.

⁷ *Sri Lal*, (1895) 17 All. 166.

⁸ *Madan Mohan*, (1883) 3 A. W. N. 197.

⁹ *Babu Ram*, (1930) 53 All. 229.

¹⁰ *Jagannath Sah*, [1937] O.W.N. 37.

Affray and riot.—An affray differs from a riot.

(1) An affray cannot be committed in a *private* place, a riot can be.

(2) An affray can be committed by *two* or more persons, a riot, by *five* or more.

Affray and assault.—An affray differs from an assault—

(1) The former must be committed in a public place; the latter may take place anywhere.

(2) The former is regarded as an offence against the public peace; the latter, against the person of an individual. An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because it affrighteth and maketh men afraid.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

THIS Chapter deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them.

161. Whoever, being or expecting to be a public servant, accepts, or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration,¹ as a motive or reward² for doing or forbearing to do any official act³ or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

"A motive or reward for doing." A person who receives a grati-

fication as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

ILLUSTRATIONS.

(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

COMMENT.—This section is intended to prevent public servants from taking bribes in any shape whatsoever.

A charge under this section is one which is easily and may often be lightly made but is, in the very nature of things, difficult to establish, as direct evidence in most cases is meagre and of a tainted nature. These considerations cannot however be suffered to relieve the prosecution of any part of the burden which rests upon it to establish the charge beyond reasonable doubt. If after everything that can legitimately be considered has been given its due weight, room still exists for taking the view that however strong the suspicion raised against the accused every reasonable possibility of innocence has not been excluded, he is entitled to an acquittal.¹

1. 'Legal remuneration' means what is given to a public servant by the Government which he serves or by any person having authority from that Government to give,—or what is given to him by any person whosoever if the Government permits him to accept the gift.²

The words of the section exclude the defence that the benefit bargained for was to go to somebody else, and also the notion that an officer is protected if he agrees to let his official acts be swayed by the motive of accepting a gratification to be used for advancing some public not private object, such as charity, science or religion. The sweepers of a certain village having been suspended from their office for some months, a meeting of the villagers was held at the house of the Patel (headman) at which the Patel was present, to consider the question of their restoration to office, and an agreement was there come to that they should be restored on their paying Rs. 800 towards the repair of the village temple, it was held that the Patel being a public servant was guilty of an offence under this section.³

A convict warder who accepted gratification from a prisoner for smuggling certain papers to some one outside the jail was held to have committed this offence.⁴

Where a judicial officer went in company with a litigant in his Court to a cloth shop and accepted a present of cloth which was paid for by that litigant to gain favour with the Judge in his suit, it was held that this offence was committed.⁵ In the

¹ *Hector Huntley*, [1944] F. C. R. 202, 23 Pat. 517.

² *M. & M.* 135.

³ *Ajipaji*, (1896) 21 Bom. 517, 520.

⁴ *Saifin Rasul*, (1924) 26 Bom. L. R. 267.

⁵ *Bhimrao*, (1924) 27 Bom. L. R. 130.

case of bribery, it is not necessary to show that as a matter of fact favour was shown to the person who offered the bribe. It is sufficient if he is led to believe that the decision would go against him if he did not give the Judge a present.¹

2. 'A motive or reward.'—These words will not allow a public servant to justify his acceptance of a gift or bribe by urging that the order passed by him was nevertheless a just one and against the very person from whom he received the bribe.

When a bribe has been given it is immaterial to inquire what, if any, effect the bribe had on the mind of the receiver.² The taking of a bribe by a head clerk to influence a Judge in his decision is sufficient for a legal conviction whether the head clerk does or does not influence or try to influence that officer.³ One R being desirous of getting his name registered as a candidate for the post of copyist in a Court was told by the accused, the head-peon, that it would be necessary to make a present to the Clerk of the Court before R could get what he wished and it was agreed between them that Rs. 20 should be paid. It was held that the accused was guilty of an offence under this section.⁴

3. 'Official act.'—It must be an act or omission in connection with the official functions of the accused.⁵ The Madras High Court is of opinion that the section is not confined to cases in which the illegal gratification is taken for doing an official act, and it is an offence under the section for a public servant to accept any gratification other than legal remuneration as a motive or reward for rendering or attempting to render any service to anyone with any public servant as such.⁶ Where A was arrested without warrant and later detained by an Excise Sub-inspector, the assistance of certain police-officers having been requisitioned in this behalf, and the police-officers accepted a certain sum by way of gratification as a motive or reward for forbearing in concert with the excise officer to send up A for trial, it was held that in forbearing to send up A for trial, the police-officers forbore to do an official act within the meaning of this section, and were consequently guilty under the section.⁷

Accomplice:—The mere presence of a person on the occasion of the giving of a bribe, and his omission to promptly inform the authorities, do not constitute him an accomplice, unless it can be shown that he somehow co-operated for the payment of the bribe, or was instrumental in the negotiations for the payment.⁸

Abetment—A person offering a public servant an illegal gratification for any of the purposes stated in the section is liable for abetment of an offence under this section.⁹ It is sufficient to constitute an offence under this section and s. 116 that there was an offer of a bribe to a public servant, in the belief that he had an opportunity or power in the exercise of his official functions to show the offerer a desired favour, although the public servant had in reality no such power.¹⁰ The section does not require that the public servant must in fact be in a position to do the official act, favour or service at the time.¹¹ While a suit was pending before a Subordinate Judge, he was approached by one J who told him that the plaintiff

¹ *Bhimrao*, (1924) 27 Bom. L.R. 120.

² *Indra Nath Banerjee v. E. G. Rooke*, (1909) 14 C. W. N. 101.

³ *Kaleechurn Serishtadar*, (1865) 3 W. R. (Cr.) 10.

⁴ *Ghulam Muhammad*, (1916) P. R. No. 9 of 1917.

⁵ *Abdul Aziz*, (1883) 3 A. W. N. 179.

⁶ *Ramachandriah*, (1927) 51 Mad. 86.

⁷ *Afzalur Rahman*, (1942) 22 Pat. 76.

⁸ *Brodhar Singh*, (1899) 27 Cal. 144.

⁹ *Maganlal and Motilal*, (1889) 14 Bom. 115; *Ahad Shah*, (1917) P. R. No. 18 of 1918.

¹⁰ *Ajudhia Prasad*, (1928) 51 All. 467.

¹¹ *Phul Singh*, [1942] Lah. 402.

would give him Rs. 10,000 if he would decree the suit. The Judge at once turned him out of the house. A few days later, one M, who was a priest of the plaintiff, came to see the Judge at his house. The Judge had reason to suspect him to be an emissary of the plaintiff for the purpose of offering him a bribe; and with the intention of setting a trap for the man the Judge himself suggested his willingness to take a bribe, and an amount and a date were settled. On the date fixed M and D, the son of the plaintiff, came with the money and handed it over to the Judge, whereupon they were arrested by certain officers who had been concealed in the house by the Judge. J, D and M were tried under this section read with s. 116. It was held that as J did not offer any bribe, nor was he or claimed to be an agent or representative of the plaintiff, his statement, or expression of opinion, that the plaintiff would be willing to offer a bribe did not amount to an abetment of the offence under this section; and that D and M were guilty of abetment of an offence under this section, although they only complied with a demand made by the public servant, and although the public servant had no guilty intention of receiving the money as a bribe.¹

There is no rule of law or social morality which warrants a discrimination in favour of the giver as distinguished from the taker of the illegal gratification.²

Attempt.—To ask for a bribe is an attempt to obtain one and a bribe may be asked for as effectually in implicit as in explicit terms.³ A mere offer to pay an illegal gratification to a public servant, although no money or other consideration is actually produced, amounts to an attempt to bribe.⁴

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking gratification, in order, by corrupt or illegal means, to influence public servant.

COMMENT.—A person, who accepts for himself, or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable under this section. The public servant is to be induced by corrupt or illegal means. The next section deals with the case where the public servant is induced by personal influence.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal

Taking gratification, for exercise of personal influence with public servant.

¹ *Chaube Dinkar Rao*, (1933) 55 *Ratan Mohi Dey*, (1905) 32 Cal. 292. All. 654.

² *Kesri Chand*, [1945] All. 450. 647.

³ *Buldeo Sahai*, (1879) 2 All. 253;

⁴ *Rameshwar Singh*, (1924) 3 Pat.

influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

ILLUSTRATION.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

COMMENT.—Sections 162 and 163 only apply to cases where the party who is to exercise corrupt or undue influence does so for a consideration obtained from a third person. If he does so, without receiving any gratification, to serve his own private interest, or for the benefit of another, whether voluntarily or upon solicitation, no offence is committed under these sections. If guilty at all, he can only be guilty as an abettor.

It will follow, therefore, that if the act done is not an offence in the public servant, it is no offence in the person who instigates him to it. Hence, a person, who, of his own accord, or without being himself bribed, offers any gratification whatever to a public servant, will be punishable as an abettor of the offence in s. 161.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for abetment by public servant of offences defined in section 162 or 163.

ILLUSTRATION.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

COMMENT.—This section is one of the express provisions for the punishment of abetment referred to in s. 109. Enhanced punishment is provided for an offence which would have been punishable under the provisions of abetment of an offence.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate,

Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS.

(a) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

COMMENT.—Public servants are prohibited from taking presents under this section, just as they are prohibited from taking any gratification under s. 161. If they were allowed to take presents they might be induced to take bribes in the shape of presents. Under s. 161 the gratification is taken as a motive or reward for doing or forbearing to do an official act; under this section the question of motive or reward is not material as the section prohibits the taking of a thing without consideration from a person having any connection with the official functions of the public servants.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant disobeying law, with intent to cause injury to any person.

ILLUSTRATION.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

COMMENT.—The offence under this section consists in a wilful departure from the direction of the law intending to cause injury to any person. Mere breach of departmental rules will not bring a public servant within the purview of this section.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—The preceding section deals generally with the disobedience of any direction of law; this section deals with a specific instance, viz. that of framing an incorrect document with intent to cause injury. It is similar to s. 218.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

COMMENT.—This section punishes those public servants who are legally bound not to engage in trade. If public servants were allowed to trade they would fail to perform their duties with undivided attention. Being in official position they could easily obtain unfair advantages over other traders.

169. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

COMMENT.—This section is merely an extension of the principle enunciated in the last section. It prohibits a public servant from purchasing or bidding for property which he is legally bound not to purchase.

170. Whoever pretends to hold any particular office as a public servant,¹ knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act² under colour of such office,³ shall be punished with imprisonment of either description, for a term which may extend to two years, or with fine, or with both.

Ingredients.—The section requires two things—

1. A person (a) pretending to hold a particular office as a public servant, knowing that he does not hold such office, or (b) falsely personating any other person holding such office.

2. Such person in such assumed character must do or attempt to do an act under colour of such office.

COMMENT.—Mere personation is not an offence under this section. The person personating must do or attempt to do some act under colour of the office of the public servant whom he personates. Section 140 punishes the person who wears the garb or carries the token used by a soldier. This section punishes a person who does any act in the assumed character of a public servant.

1. 'Pretends to hold any particular office as a public servant.'—It must be an existing office. If it is uncertain who legally fills the office, a person doing an official act, in pursuance of what he honestly believes to be his lawful title to the office, does not come within this section.

2. 'Any act.'—It is not necessary that the act done or attempted to be done should be such an act as might legally be done by the public servant personated. The accused was arrested when he was demanding one anna's worth of fruit from a fruit-seller for one pice on the representation that he was a head constable, which in fact he was not. It was held that if he pretended to be a police-officer and tried as such police-officer to extort money or things from a fruit-seller, he was guilty of an offence under this section.¹ A person who poses as a Government servant and by so doing obtains of another services which he would not otherwise have obtained and which the other person was bound to give on demand by a Government officer commits an offence under this section.²

3. 'Colour of such office.'—An act is done 'under colour of' an office, if it is an act having some relation to the office, which the actor pretends to hold. If it has no relation to the office, as if A pretending to be a servant of Government, travelling through a district, obtain money, provisions, etc., the offence may amount to cheating under s. 415, but is not punishable under this section.³ The act done under colour of office must be an act which could not have been done without assuming official authority. Where the accused avoided paying a one anna platform charge by pretending upon entering the station platform that he was an officer of the Criminal Investigation Department, it being a custom of the railway company not to require from such officers a platform ticket, it was held that this did not constitute an offence under this section.⁴ But the offence of cheating was manifestly committed.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

COMMENT.—Under this section the offence is complete, although no act is done or attempted in the assumed official character. The mere circumstance of wearing a garb, or using a token, with the intention or knowledge supposed, is sufficient. It is not necessary that something should pass in words. If any act is done then the preceding section will apply.

Under s. 140 wearing the garb or carrying the token of a soldier is made punishable.

¹ *Aiz-ud-din*, (1904) 27 All. 294.

² *Sukhdeo Pathak*, (1917) 3 P. L.

³ *Bashirullakhan*, [1942] Nag. 484. J. 389.

⁴ M. & M. 142.

Wearing garb or carrying token used by public servant with fraudulent intent.

CHAPTER IXA.

OF OFFENCES RELATING TO ELECTIONS.

171A. For the purposes of this Chapter—

(a) “candidate” means a person who has been nominated as a candidate at any election¹ and includes a person ^{“Candidate,” “electoral right” defined.} who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

(b) “electoral right” means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

COMMENT.—This chapter was introduced in the Code by the Indian Elections Offences and Inquiries Act (XXXIX of 1920). It seeks to make punishable under the ordinary penal law, bribery, undue influence, and personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election; and, further, to debar persons guilty of malpractices from holding positions of public responsibility for a specific period.¹

1. ‘Election.’—‘Election’ is defined as including election to all classes of public bodies where such a system is prescribed by law (*vide* Explanation 3 to s. 21, *supra*).

171B. (1) Whoever—

(i) gives a gratification to any person with the object of inducing ^{Bribery.} him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

¹ Statement of Objects and Reasons, s. 4.
Gazette of India, 1920, Part V, p. 135.

COMMENT.—This section defines the offence of bribery at an election.

'Bribery' is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. 'Gratification' is already explained in s. 161 of the Penal Code and is not restricted to pecuniary gratifications or to gratifications estimated in money.¹

Sub-clause (2).—'Offers.'—By this clause the attempt to corrupt is made equivalent to the complete act.

Treating.—Treating will be bribery if refreshment is given or accepted with the intent required by law.² The gist of the offence of treating is the corrupt inducement to the voter to vote or refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. 'Treating' is defined in s. 171E.

171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

COMMENT.—This section defines 'undue influence at elections.'

Undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand, or not to stand as, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of persuasion and any interference with the liberty of the candidates of the electors. The inducing or attempting to induce a person to believe that he will become the object of Divine displeasure is also interference. It is not, however, interference within the meaning of the clause to make a declaration of public policy or a promise of public action.

Where an attempt or threat is proved, it is unnecessary to prove that any person was in fact prevented from voting because the offence is complete.

CASE.—On the night preceding the day of an election a candidate (complainant)

¹ Statement of Objects and Reasons, s. 8.
Minette of India, 1920, Part V, p. 135, ² *Ibid.*

was prevented, from coming out of his house to canvass for votes, by his rival candidate and others (accused) who were picketing the complainant's house. It was held that on these facts the accused had not interfered or attempted to interfere with the free exercise of an electoral right or threatened any candidate or voter with injury; and no *prima facie* case under this section was made out.¹

171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

COMMENT.—This section defines 'personation at elections.' It covers a person who attempts to vote in another person's name or in a fictitious name, as well as a voter who attempts to vote twice and any person who abets, procures, or attempts to procure, such voting.

The accused must have been actuated by a corrupt motive.²

The applicant was accused of having abetted the personation of a voter at a Municipal election in that, not being himself acquainted with the person who came forward to vote, he had, on the advice of others, put his name to a "signature sheet" in token that the thumb mark made by the voter was that of the person entitled to vote under a certain name on the electoral roll. It was held that, inasmuch as the acts done by the applicant apparently constituted the specific offence provided for by s. 171F, he could only be tried for that offence, and could not be tried for abetment of the general offence provided for by s. 465.³

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment, or provision.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of facts which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

¹ *Ram Saran Das*, (1926) 7 Lah. 218.

² *Venkayya*, (1920) 58 Mad. 444.
³ *Ram Nath*, (1924) 47 All. 268.

COMMENT.—False statements of fact in relation to the personal character or conduct of a candidate are penalised by this section. General imputations of misconduct unaccompanied by any charges of particular acts of misconduct cannot properly be described as statements of fact within the meaning of this section.¹

An offence under this section is not a species of the more general offence of defamation. There may be cases under this section which do not fall under s. 499 and *vice versa*.²

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Illegal payments in connection with an election.

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

COMMENT.—This section makes it illegal for any one, unless authorized by a candidate, to incur any expenses in connection with the promotion of the candidate's election.

171I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees.

Failure to keep election accounts.

COMMENT.—This section punishes failure to keep accounts of expenses incurred in connection with an election, if such accounts are required to be kept by any law or rule having the force of law.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

This Chapter deals with penal provisions intended to enforce obedience to the lawful authority of public servants. Contempts of the lawful authority of Courts of Justice, officers of Revenue, officers of Police, and other public servants are punishable under this head.

¹ *Radhakrishna Ayyar*, (1932) 55 Mad. 791.

² *Bhagoelal*, [1942] Nag. 208.

172. Whoever absconds¹ in order to avoid being served with a summons, notice or order² proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—Absconding to avoid service of summons or other proceeding is similar to non-attendance in obedience to an order from a public servant. The object of this section is to punish an offender for the contempt his conduct indicates of the authority whose process he disregards.

The second clause applies where the summons, notice or order is (1) for attendance in Court; or (2) for production of a document.

1. 'Absconds.'—This term is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense is to hide oneself; and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply only to the commencement of the concealment. If a person having concealed himself before process issues, continues to do so after it is issued, he absconds.¹

2. 'Summons, notice or order.'—The 'summons,' notice or order referred to should be addressed to the same person whose attendance is required and who absconds to avoid being served with such a 'summons, notice or order.' A warrant is not an order served on an accused, it is simply an order to the police to arrest him.² It is not an offence under this section to abscond to avoid arrest under a warrant.³

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may

¹ *Srinivasa Ayyangar*, (1881) 4 Mad. 393, 397.

² *Lakshmi*, (1881) Unrep. Cr. C. 152.

³ *Annawadin*, (1923) 1 Ran. 218.

extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—This section punishes intentional prevention of the service of summons, notice or order.

A refusal to sign a summons,¹ a refusal to receive a summons,² and the throwing down of a summons after service,³ do not constitute the offence of intentionally preventing the service of a summons under this section. Under the Criminal Procedure Code the mere tender of a summons is sufficient and a refusal by a person to receive it does not expose him to the penalty of this section. Actual delivery is not necessary to complete the service.⁴

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATIONS.

(a) A, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

COMMENT.—The offence contemplated by this section is an intentional omission to appear—

(1) at a particular specified⁵ place in British India,⁶

¹ *Kalya Fakir*, (1868) 5 B. H. C. 200 (n), 1 Weir 79.

(Cr. C.) 34; *Krishna Gobinda Das*, (1802) 20 Cal. 358.

² *Punamalai*, (1882) 5 Mad. 199.

³ *Arumuga Nadan*, (1881) 5 Mad.

⁴ *Sahdeo Rai*, (1918) 40 All. 577.

⁵ *Ram Saran*, (1882) 5 All. 7.

⁶ *Paranga*, (1898) 16 Mad. 468.

- (2) at a particular time,
- (3) before a specified public functionary,
- (4) in obedience to a summons, notice or order (written or verbal)¹ not defective in form,² and
- (5) issued by an officer having jurisdiction³ in the matter.

A conviction cannot be had unless the person summoned

- (1) was legally bound to attend, and
- (2) refused or intentionally omitted to attend.⁴

CASES.—*Willful departure before lawful time.*—Where a man in obedience to a summons attended a Magistrate's Court at 10 A.M., but finding the Magistrate not present at the time mentioned in the summons, departed without waiting for a reasonable time, it was held that he was guilty of an offence under this section.⁵

Public servant absent.—Where a public servant was absent on a date fixed in the summons, the person summoned could not be convicted, though he purposely failed to attend.⁶

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATION.

A, being legally bound to produce a document before a Zila Court, intentionally omits to produce the same. A has committed the offence defined in this section.

COMMENT.—This section punishes persons who refuse to produce documents which they are legally bound to produce before a public servant.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both :

or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing

¹ *Guman*, (1873) Unrep. Cr. C. 75 ;
(1870) 5 M. H. C. (Appx.) 15.

² *Krishappa*, (1896) 20 Mad. 31.

³ *Venkaji Bhaskar*, (1871) 8 B. H. C. (Cr. C.) 10; (1865) 1 Weir 87.

⁴ *Sreenath Ghose*, (1868) 10 W. R. (Cr.) 33.

⁵ *Kisan Bapu*, (1885) 10 Bom. 98.

⁶ *Krishappa*, *sup.*

the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—This section applies to persons upon whom an *obligation* is imposed by law to furnish certain information to public servants, and the penalty which the law provides intended to apply to parties who commit an intentional breach of such obligation¹ and not where the public servants have already obtained the information from other sources.² Several Acts have imposed obligations on the public to give certain kinds of information to public servants. Section 45(1) of the Criminal Procedure Code imposes a duty on the owner of land of giving information as to the commission of an offence.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, ^{Furnishing false in-} as true, information on the subject which he knows ^{formation.} or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both ;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATIONS.

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

¹ *Phool Chand Brojobasree*, (1871) 4 Cal. 623; *Pandya*, (1884) 7 Mad. 436; 16 W. R. (Cr.) 35. *Gopal Singh*, (1892) 20 Cal. 316.

² *Sashi Bhusan Chuckerbutty*, (1878)

Explanation.—In section 176 and in this section the word “offence” includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 398, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460 and the word “offender” includes any person who is alleged to have been guilty of any such act.

COMMENT.—Section 176 deals with the omission to give information; this section deals with the giving of false information. Under both the sections the liability depends upon legal obligation to give information. Persons who are not under a legal obligation to furnish information cannot be dealt with under these sections.

178. Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing oath or affirmation when duly required by public servant to make it.

COMMENT.—The refusal to take an oath amounts to contempt of Court. The person refusing may be dealt with under s. 480 of the Criminal Procedure Code summarily or the Court may proceed under s. 195 of the same Code.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer public servant authorised to question.

COMMENT.—The offence under this section consists in the refusal to answer a question which is relevant to the subject concerning which the public servant is authorised to inquire, or which at least touches that subject. Under ss. 121 to 132 of the Indian Evidence Act a witness is exempted from answering certain questions. If a person gives false answers then he will be guilty under s. 193 and not under this section.

Refusing to answer the question of a police-officer investigating a case under s. 161 of the Criminal Procedure Code is not an offence under this section.¹

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term

Refusing to sign statement.

¹ *Mawzanagyi*, (1930) 8 Ran. 511,

which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—The statement must be such an one as the accused can be legally required to sign, e.g., a statement recorded under the provisions of ss. 164 and 364(2) of the Criminal Procedure Code.

181. Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorised by law to administer such oath or affirmation, makes, to such public servant or other person aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—This section should be compared with s. 191. Under it a false statement to any public servant, or other person, authorized to administer oath or affirmation, is punishable.¹ It does not apply where the public servant administers the oath in a case wholly *beyond his jurisdiction*² or where he is not competent to take a statement on solemn affirmation.³

182. Whoever gives to any public servant any information¹ which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything² which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ILLUSTRATIONS.

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

¹ *Niaz Ali*, (1882) 5 All. 17.

438.

² *Ajdy Chetty*, (1895) 2 M. H. C.

³ *Subba*, (1883) 6 Mad. 252.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

COMMENT.—Object.—The object of this section is that a public servant should not be falsely given information with the intent that he should be misled by a person who believed that information to be false, and was intended to mislead him. Thus it is an offence to give false information which misleads a public servant into doing what he ought not to do, whether that can be shown to be intended for the purpose of injuring any particular person or not.

1. 'Any information.'—The Bombay and the Patna High Courts have ruled that any 'false information' given to a public servant, with the intent mentioned in the section, is punishable under it whether that information is volunteered by the informant or is given in answers to questions put to him by the public servant.¹ Where a driver of a motor vehicle who had no licence with him, on being asked his name by a police-officer, gave a fictitious name, it was held that he had committed an offence under this section.²

The section makes no distinction between information relating to a cognizable offence and one relating to a non-cognizable offence, nor is there anything in the section to justify the conclusion that it applies only to cases in which the information given to any public servant relates to a cognizable offence.³

No offence is committed if the public servant is a servant of an Indian State.⁴

2. 'To do or omit anything.'—It is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given, but the intention or knowledge (to be inferred from his conduct) of the person supplying such information.⁵

Under this clause it is not necessary to show that the act done would be to the injury or annoyance of any third person.⁶

CASES.—Causing public servant to do what he ought not to do.—The accused falsely telegraphed to a District Magistrate that the town had been attacked by a gang of 200 robbers, but the Magistrate put no faith in the telegram and took no action; it was held that the accused were guilty of an offence under this section.⁷ A personated B at an examination and passed the examination and obtained a certificate in B's name. B, thereupon, applied to have his name entered in the list of candidates for Government service. He attached to this application the certificate issued in his name, and his name was ordered to be entered on the list of candidates. It was held that he was guilty of an offence under this section.⁸

¹ *Ramji Sajabharao*, (1885) 10 Bom. 124; *Lachman Singh*, (1928) 7 Pat. 715.

² *Lachman Singh*, (1928) 7 Pat. 715. But the Rangoon High Court has held that 'gives' should not be restricted to 'volunteers': *Sultan v. Major C. de M. Wellborne*, (1925) 3 Ran. 577.

³ *Thakuri*, (1940) 10 Luck. 55.

⁴ *Rambharthi*, (1923) 25 Bom. L. R. 772.

⁵ *Budh Sen*, (1891) 18 All. 351; *Raghu Tewari*, (1893) 15 All. 336.

⁶ *Ganesh Khanderuo*, (1889) 13 Bom. 506.

⁷ *Budh Sen*, *sup.*

⁸ *Ganesh Khanderuo*, *sup.*

Where the accused falsely gave information to the police that a horse belonging to him had strayed, when in fact he had sold it some time previously, and did this with the intention that a charge should be brought against the purchaser, it was held that he was guilty of an offence under this section.¹

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Resistance to the taking of property by the lawful authority of a public servant.

COMMENT.—This section makes it penal to offer resistance to the taking of property by the lawful authority of any public servant. The Bombay High Court has held that there are no words in the section as there are in s. 99, extending the operation of the section to acts which are not strictly justifiable by law. Resistance to an act of a public officer acting bona fide though in excess of his authority may give rise to some charge in the nature of assault, but it cannot afford any foundation for a prosecution under this section.² The Madras High Court is of opinion that this section should be read in conjunction with s. 99. Taking the two together, if an officer acts in good faith under colour of his office the mere circumstance that his "act may not be strictly justifiable by law" cannot affect the lawfulness of his authority. In this case property had been seized in execution by the officer of the Court, and it was held that as the officer was acting bona fide, though he had wrongly seized the property of the accused, the accused could be convicted under this section for resisting the execution.³ In the Bombay case a cultivator of land, who had grown sugar-cane, was in arrears with his irrigation dues. He sold the sugar-cane to a trader, and the accused was employed by the trader to crush it and prepare jaggery. The Talati (revenue official) attached the jaggery when it was being conveyed to a village. The accused, however, delivered the jaggery to a shop-keeper on the way instead of taking it to the Mamlatdar's (revenue officer's) office. It was held that as the property attached was no longer the defaulting cultivator's property, the accused was entitled to resist peacefully the wrongful act of the Talati in seizing the jaggery.⁴

Lawful authority wanted.—Where a person resisted an official in attaching property under a warrant, the term of which had already expired,⁵ or which did not specify the date on or before which it was to be executed,⁶ it was held that he was not guilty under this section. If the warrant is executed by a Court official when it is addressed to a peon, resistance to the Court official is not illegal.⁷

If a bailiff breaks the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 180.⁸

¹ *Incha Ram*, (1922) 44 All. 647.

² *Sukharam Pawar*, (1935) 37 Bom. L. R. 362.

³ *Tiruchittambala Pathan*, (1896) 21 Mad. 78.

⁴ *Sukhram Pawar*, sup.

⁵ *Anand Lall Bera*, (1883) 10 Cal. 18.

⁶ *Mohini Mohan Banerji*, (1916) 1 P. L. J. 550.

⁷ *Ibid.*

⁸ *Gari Kom Aba Dore*, (1870) 7 B. H. C. (Cr. C.) 83.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—This section punishes intentional obstruction of the sale of any property conducted under the lawful authority of a public servant. No physical obstruction is necessary. Use of abusive language by a person at an auction-sale conducted by a public servant makes him liable to be convicted of an offence under this section.¹

185. Whoever, at any sale of property¹ held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

COMMENT.—This section makes it penal to bid at a public sale for property on account of a party who is under a legal incapacity to purchase it, or to bid for it not intending to complete the purchase, or as it is expressed to perform the obligations under which the bidder lays himself by such "bidding."²

1. 'Property.'—This word is used in its wide sense. The right to sell drugs is a monopoly granted for a certain area and comes within the definition of property. A person who bids at an auction of the right to sell drugs within a certain area under a false name and, when the sale is confirmed in his favour, denies that he has ever made any bid at all, is guilty of an offence under this section.³

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—This section provides for voluntarily obstructing a public servant in the discharge of his duties. It must be shown that the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions as authorized by law. The mere fact of a public servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence.⁴ If the public servant is acting in good

¹ *Provl. Govt., C. P. & Berar v. Balaram*, [1939] Nag. 189.

² 2nd Rep., s. 110.

³ *Bishan Prasad*, (1914) 37 All. 128.

⁴ *Baroda Kant Pramanick*, (1896)

1 C. W. N. 74; *Lilla Singh*, (1894) 22 Cal. 280; *Tulsiram*, (1888) 13 Bom. 168.

faith under colour of his office there is no right of defence against his act.¹

CASES.—Obstruction.—A Circle Inspector went into the compound of the accused with a village servant to remove a portion of the hedge which was an encroachment. When the servant put his scythe to the hedge to cut it, the accused caught hold of the scythe and threatened him. It was held that the accused was guilty of an offence under this section, since his laying hold of the scythe amounted to physical obstruction, and the obstruction offered to the servant was tantamount to obstruction to the Circle Inspector under whose orders he was acting.² The accused, a licensed motor driver, in order to evade payment of toll, drove a motor bus for six days on a side track before reaching the toll bar, and after driving on that side track for about three furlongs again took the main road. There was a checking bar further up the road, but the accused did not stop the bus there to pay the toll although he was signalled to do so. It was held that as the accused prevented the toll contractor's servant from collecting the dues under the provisions of the Tolls on Roads and Bridges Act, 1875, the accused was guilty of obstructing him in the discharge of his duty.³

Rescuing from custody.—Where two Court peons arrested the accused and while they were bringing him towards the Court, he called for help and four other persons came and rescued him from the custody of the peons, it was held that they were guilty of an offence under this section, and the accused of abetting the same.⁴

No obstruction if no overt act done or physical means used.—A person chaining from within the door of his house at the approach of an official charged with the execution of a warrant to attach his moveable property;⁵ a person standing in a staircase verbally objecting to a police search party going up-stairs without any threat or obstruction of the passage;⁶ a person spreading a false report and thereby preventing persons from bringing their children for vaccination;⁷ a person preventing a vaccinator from taking lymph from the arm of his child;⁸ and a person refusing to serve on a village *panchayat* as it included a member of the depressed classes and dissuading other people from serving on it,⁹ were held to have committed no offence under this section.

No obstruction if order or warrant under which public servant acts is not legal.—A person obstructing a public servant executing a warrant of arrest which was not signed by the Magistrate but only bore his initials and the substance of which was not notified to him was not guilty of an offence under this section.¹⁰ An attachment made under a writ which does not bear the seal of the Court¹¹ or under a warrant of which the date has expired,¹² or under a warrant which was in contravention of Order XXXVII, r. 3, Civil Procedure Code,¹³ is an invalid and illegal attachment, and resistance to an officer executing such a writ does not amount to an offence under this section.

¹ *Poomalui Udayan*, (1898) 21 Mad. 299; *Pukot Kotu*, (1896) 19 Mad. 349.

² *Bhagu Mana*, (1927) 30 Bom. L. R. 364; *Limba*, (1929) 31 Bom. L. R. 800.

³ *Suleman*, (1934) 36 Bom. L. R. 1124.

⁴ *Sheo Prakash Tewari v. Bhoop Narain Prasad Pathak*, (1895) 22 Cal. 759.

⁵ *Maina*, (1888) Unrep. Cr. C. 407; *Somnanna*, (1892) 15 Mad. 221.

⁶ *Ah Choung*, (1931) 9 Ran. 601.

⁷ *Thimmachi*, (1891) 15 Mad. 93.

⁸ *Komati Ramanna*, (1882) 1 Weir 181.

⁹ *Ram Ghulam Singh*, (1925) 47 All. 579.

¹⁰ *Abdul Gafur*, (1896) 23 Cal. 896; *Satish Chandra Rai v. Jodu Nandan Singh*, (1899) 26 Cal. 748.

¹¹ *Badri Gope*, (1925) 5 Pat. 216.

¹² *Mahadeo*, (1926) 2 Luck. 40.

¹³ *Tokha*, (1933) 55 All. 985.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both ;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—This section provides, first, in general terms for the punishment when a person, being bound by law to render assistance to a public servant in the execution of his public duty, intentionally omits to assist; and, secondly, for the punishment when the assistance is demanded for certain specified purposes.¹

This section speaks of *assistance* to be rendered to public servants, just as ss. 176 and 177 speak of furnishing *true information*.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both ;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.— It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

¹ *Ramaya Naika*, (1908) 26 Mad. 419, 420, F.B.

ILLUSTRATION.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

COMMENT.—Ingredients.—To constitute this offence it is necessary to show—

(1) a lawful order promulgated by a public servant empowered to promulgate it;

(2) a knowledge of the order which may be general or special;

(3) disobedience of such order; and

(4) the result that is likely to follow from such disobedience.

There must be evidence that the accused had knowledge of the order with the disobedience of which he is charged. Mere proof of a general notification promulgating the order does not satisfy the requirements of the section.¹ Mere disobedience of an order does not constitute an offence in itself, it must be shown that the disobedience has or tends to a certain consequence.²

Order to be for public purposes.—This section applies to orders made by public functionaries for public purposes and not to an order made in a civil suit between party and party.³ Disobedience of a temporary injunction issued by the Court will not, therefore, come within the purview of this section.⁴ An order issued by a Magistrate prohibiting a landlord from holding a new market on his estate close to an old established one belonging to a neighbouring landlord, on the ground that it had caused unlawful assemblies and raised apprehension of a breach of the peace;⁵ an order to the priests of a temple, much frequented by pilgrims, to widen and heighten the doorway so as to obviate the dangers from overcrowding and improve the ventilation;⁶ and an order commanding an assembly of five or more persons to disperse,⁷ were all held to be valid orders under this section.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years. or with fine, or with both.

COMMENT.—Under this section there must be a threat of injury⁸ either to the public servant or to any one in whom the accused believes the public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his action. See s. 503 which defines criminal intimidation and applies in all cases. This section deals with criminal intimidation of a public servant.

Where two constables went at night to the house of a suspect, kept under surveillance, and called out his name from the public road, and his brother who lived

¹ *Ramdas Singh*, (1920) 54 Cal. 152.

² *Lachmi Devi*, (1930) 58 Cal. 971.

³ *Chandrakanta De*, (1980) 6 Cal. 445.

⁴ *Mallapa*, (1915) 17 Bom. L. R. 670.

⁵ *Dyknunram Shaha Roy*, (1872) 10 Beng. L. R. 434, 18 W. R. 47, F.B.

⁶ *Ramchandra Eknath*, (1869) 6 B. H. C. (Cr. C.) 36.

⁷ *Tucker*, (1852) 7 Bom. 42.

in an adjoining hut came out and threatened to assault the constable for the annoyance caused, it was held that he was guilty of an offence under this section.¹

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

COMMENT.—The object of this section is to prevent persons from terrorising others with a view to deter them from seeking the protection of public servants against any injury. Where a clergyman, knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him for withholding it, it was held that the clergyman had committed no offence under this section.²

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

THE Code treats the giving and the fabricating of false evidence in exactly the same way, and marks the grades of those offences on the principle that the law ought to make a distinction between the kind of false evidence which produces great evils and the kind of false evidence which produces comparatively slight evils.³

The offences comprised in this Chapter are as follows :

- | | |
|---|---|
| 1. Giving, fabricating or using false evidence. | 10. False charge of an offence. |
| 2. Issuing, or using, false certificate. | 11. Harbouring offenders. |
| 3. Making a false statement in a declaration and using it as true. | 12. Gift to screen offender. |
| 4. Causing disappearance of evidence of an offence. | 13. Public servant disobeying direction of law. |
| 5. Intentional omission to give, or giving false information respecting an offence. | 14. Public servant framing incorrect record of report. |
| 6. Destruction of a document. | 15. Wrongful commitment. |
| 7. False personation for purposes of a suit. | 16. Intentional omission to apprehend or suffering escape of offenders. |
| 8. Removal of, or fraudulent claim to, property to prevent its seizure. | 17. Resistance to lawful apprehension. |
| 9. Suffering decree or making a false claim, or obtaining a false decree. | 18. Unlawful return from transportation. |
| | 19. Contempt of Court. |
| | 20. Personation of a juror or assessor. |

¹ *Yar Muhammad* (1930) 58 Cal. 392.

² *DiCruz*, (1884) 8 Mud. 140.

³ Stokes, Vol. I, p. 30.

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191. Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject,¹

Giving false evidence.

makes any statement which is false,² and which he either knows or believes to be false or does not believe to be true,³ is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

ILLUSTRATIONS.

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z: A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

COMMENT.—The offence of giving false evidence is called 'perjury' under the English law.

Ingredients.—The offence under this section involves three ingredients—

(1) A person must be legally bound

(a) by an oath, or any express provision of law, to state the truth; or

(b) to make a declaration upon any subject.

(2) He must make a false statement.

(3) He must

(a) know or believe it to be false or

(b) not believe it to be true.

English law.—According to English law a statement on oath or affirmation, to amount to perjury, must be

- (1) taken in a judicial proceeding ;
- (2) taken before a competent tribunal ;
- (3) material to the question ;
- (4) false ; and
- (5) known by the witness to be false or not known to be true.

Difference between Indian and English law.—(1) According to English law, the false statement must have reference to some judicial proceedings; and the false evidence must be given before a competent tribunal. In the Code this distinction only exists in reference to the degree of punishment imposed.¹

(2)* According to English law, perjury must be proved by two witnesses, or by one witness with proof of other material and relevant facts substantially confirming his testimony. Under the Penal Code no particular number of witnesses in any case is required to prove any fact.²

(3) The English law requires that the matter sworn to must be material to the cause depending in the Court. According to the Penal Code it is not necessary that the statement should be material but that would be considered in awarding punishment.³

(4) In England, an oath, or an affirmation rendered equivalent to it by law, is an essential element of the offence. It is immaterial whether the fact which is sworn to is in itself true or false. In India, an oath is merely one of the forms by which a party may be bound to speak the truth. Even if an oath were improperly administered by any incompetent person, still the offence would be committed, if the party giving the false evidence were bound by an 'express provision of law to state the truth.'

1. 'Legally bound by an oath or by an express provision of law, etc.'—It is necessary that the accused should be legally bound by an oath before a competent authority. If the Court has no authority to administer an oath the proceeding will be *coram non judge* and a prosecution for false evidence will not stand.⁴ Similarly if the Court is acting beyond its jurisdiction it will not be sustained.⁵ The Court must be a British Indian Court, otherwise no offence is committed for which the accused will be liable in British India.⁶

'By an oath.'—An oath or a solemn affirmation is not a *sine qua non* in the offence of giving false evidence.⁷ The offence may be committed although the person giving evidence has neither been sworn nor affirmed.⁸

'By an express provision of law.'—Under this clause sanction of an oath is not necessary; there must be a specific provision of law compelling a person to state the truth. Where the accused is not bound by an express provision of law to state the truth he cannot be charged for giving false evidence.⁹

'Declaration upon any subject.'—In certain cases the law requires a declaration from a person of verification in a pleading;—and if such declaration is made falsely

¹ See *B. G. Tilak*, (1904) 6 Bom. L. R. 324, 326.

² The Indian Evidence Act, I of 1872, s. 134.

³ See *Babu Ram*, (1904) 26 All. 509.

⁴ *Abdul Majid v. Krishna Lal Nag*, (1893) 20 Cal. 724; *Niaz Ali*, (1882) 5 All. 17; *Mata Dayal*, (1897) 24 Cal. 753; *Subba*, (1883) 6 Mad. 252; *Fatch Ali*, (1894) P. R. No. 15 of 1894.

⁵ *Chait Ram*, (1888) 6 All. 103;

Bhanna, (1886) 11 Bom. 702, r.b.

⁶ *Rambharthi*, (1928) 25 Bom. L. R. 772.

⁷ (1865) 2 W. R. (Cr. L.) 9.

⁸ *Gobind Chandra Seal*, (1892) 19 Cal. 355; *Shara*, (1891) 10 Bom. 359; contra, *Maru*, (1888) 10 All. 207.

⁹ *Hari Charan Singh*, (1900) 27 Cal 455.

it will come under this clause. The words 'any subject' denote that the declaration must be in connection with a subject regarding which it was to be made.

Criminal Procedure Code, s. 161 (2).—Under s. 161(2) of the Criminal Procedure Code of 1898, a person is not bound by law to tell the truth when questioned by a police-officer. The Code of 1882 contained the word 'truly' after the word 'questions' in sub-section (2) of s. 161, but it has been omitted in the present Code.

2. 'Any statement which is false.'—It is not necessary that the false evidence should be material to the case in which it is given.¹

3. 'Knows or believes to be false or does not believe to be true.'—The matter sworn to must be either false in fact, or, if true, the accused must not have known it to be so. The making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally the giving of false evidence.² Where a man swears to a particular fact, without knowing at the time whether the fact be true or false, it is as much perjury as if he knew the fact to be false, and equally indictable.³ But a man cannot be convicted of perjury for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true.⁴

Written statements and applications.—A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of this offence.⁵ Signing and verifying an application for execution containing false statements is an offence under this section, and it makes no difference that at the time when the signature and verification were appended the application was blank.⁶ But the verification of an application, in which the applicant makes a false statement, does not subject him to punishment for this offence, if such application does not require verification.⁷

Criminating statement is no justification.—When a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence.⁸

Illegality of trials does not purge perjury.—The fact that the trial in which false evidence is given is to be commenced *de novo* owing to irregularity does not exonerate the person giving false evidence in that trial from the obligation to speak the truth, and he is liable for giving false evidence.⁹ But in a Bombay case the proceedings in the trial at which the false evidence was given were subsequently annulled in consequence of the sanction for the prosecution being insufficient, and the conviction of the accused was, therefore, reversed.¹⁰

Accused not liable for giving false evidence.—The authors of the Code observe: "We have no punishment for false evidence given by a person when

¹ *Parbutty Churn Sircar*, (1806) 6 W. R. (Cr.) 84; *Dumodhar Kulkarni*, (1868) 5 B. H. C. (Cr. C.) 68.

² *Echan Meeah*, (1865) 2 W. R. (Cr.) 47.

³ *Mawbey*, (1796) 6 T. R. 619, 637; *Schlesinger*, (1847) 10 Q. B. 670.

⁴ *Muhammad Ishaq*, (1914) 30 All. 362.

⁵ *Mehrbab Singh*, (1864) 6 All. 626;

Padam Singh, (1930) 32 All. 856.

⁶ *Ratanchand*, (1904) 6 Bom. L. R. 886.

⁷ *Kasi Chunder Mozumdar*, (1880) 6 Cal. 440.

⁸ (1867) 3 M. H. C. (Appx.) xxxix.

⁹ *Virasami*, (1890) 19 Mad. 375;

Batesar Mandal, (1884) 10 Cal. 604.

¹⁰ *Rarji valad Toju*, (1871) 8 B. H. C. (Cr. C.) 37.

dance to screen himself from punishment is liable to be convicted under this section. The Allahabad High Court¹ has veered round to the same view, after distinguishing an earlier case² to the contrary.

CASES.—Fabrication of evidence to be used in judicial proceeding.—Where the accused was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, it was held that the Magistrate was right in convicting and punishing the accused for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding, and of voluntarily assisting in concealing stolen property under s. 414.³ Where a public servant, in charge as such of certain documents, having been required to produce them and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment, it was held that his offence fell within this section.⁴ Where the date of a document, which would otherwise not have been presented for registration within time, was altered for the purpose of getting it registered, it was held that this offence had been committed.⁵ The brother of an accused person applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify the accused. The Court assenting to this request, he produced before the Court ten or twelve men, none of whom could be identified as the accused by any of the witnesses. Upon being asked by the Court where the accused was, he pointed out a man who was not the accused. It was held that he was guilty of fabricating false evidence.⁶ Where an accused person had unsuccessfully sought to obtain a woman in marriage and thereafter made and registered a writing in her favour falsely reciting that he had married her, and purporting to convey to her a plot of land in lieu of her dowry, it was held that he had acted in furtherance of his desire to obtain her person, that as this could under the circumstances be done only by judicial proceedings, his intention was to use the document, with its false statements, in a judicial proceeding and thereby to mislead the Court, and that he was therefore guilty of an offence under this section.⁷ The accused, who was in possession of the complainant's house as a yearly tenant, about the time the tenancy came to an end, prepared another rent-note for a period of four years and got it registered, without the complainant's knowledge. It was held that the accused had fabricated false evidence inasmuch as the rent-note, which contained an admission against the interest of the accused, could be admitted in evidence on his behalf.⁸

Attempt.—Facts showing that an accused person had dug a hole intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, were held to justify a conviction for an attempt to fabricate false evidence.⁹

Abetment.—M instigated Z to personate C and to purchase in C's name a stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. It was held that the offence

¹ *Bhagirath Lal*, (1934) 57 All. 403.

² *Ram Khilawan*, (1906) 28 All. 703.

³ *Rameshar Rai*, (1877) 1 All. 379.

⁴ *Mazhar Hussain*, (1883) 5 All. 553.

⁵ *Mir Ekhar Ali*, (1880) 6 Cal. 482.

⁶ *Cheda Lal*, (1907) 29 All. 351.

⁷ *Legal Remembrancer v. Ahí Lal Mandal*, (1921) 48 Cal. 911.

⁸ *Rajaram*, (1920) 22 Bom. L. R. 1229.

⁹ *Nunda*, (1872) 4 N. W. P. 138.

of fabricating false evidence had been actually committed, and that M was guilty of abetting it.¹

No fabrication if no erroneous opinion could be formed touching any point material to result of proceeding.—Where a person produced, as evidence in a suit, a registered deed of sale in which the property sold was wrongly numbered, and which was corrected by himself subsequent to the registration;² and where there was a dispute as to the ownership of articles in a box in the accused's house and he made a hole in the wall of the house and removed the articles he claimed, his object being to make it appear that there had been a theft, but he did not charge any one with having committed the theft,³ it was held that there was no fabrication.

No fabrication if evidence fabricated is inadmissible.—Where a police-officer, who had suppressed a document, made a false entry in his diary to support his assertion that he had forwarded certain documents, intending that such entry might be used as evidence in his behalf that he had so forwarded the document, it was held that the evidence fabricated must be admissible evidence and as the entry would not be admissible in his behalf, though contrary to his intention, he was not liable.⁴ Where a police-officer made a false entry in the special diary relating to a case which was being investigated by him but the document in which the alleged false entry was made was not one which was admissible in evidence, it was held that he was not guilty.⁵ Some doubt has been thrown on the correctness of these decisions by the Calcutta High Court. It is the intention that creates the criminal offence and not the fact as to whether, under the terms of the law, the document is admissible in evidence. Decisions laying down that s. 192 is limited to such cases as those in which the fabricated evidence is, in fact, admissible under the terms of the law of evidence, are doubtful and the view expressed in such decisions might raise considerable difficulty in cases where the Judge has improperly admitted in evidence a document not admissible under the terms of the law.⁶ The mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of s. 193.⁷

No fabrication if public servant is not authorised to hold investigation.—The making up of accounts falsely with the intention of producing them before a forest officer not empowered by law to hold an investigation and take evidence was held not to be a fabrication of false evidence.⁸

193. Whoever intentionally gives false evidence in any stage of
Punishment for false a judicial proceeding, or fabricates false evidence
evidence. for the purpose of being used in any stage of a
 judicial proceeding,¹ shall be punished with imprisonment of either
 description for a term which may extend to seven years, and shall
 also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case,² shall be punished with imprisonment of either description

¹ *Mu'a*, (1879) 2 All. 105; *Durga-charan Gir*, (1902) 25 All. 75.

² *Fateh*, (1882) 5 All. 217.

³ *Thera Ram*, (1882) 10 C. L. R. 187.

⁴ *Gauri Shankar*, (1883) 6 All. 42.

⁵ *Zakir Husain*, (1898) 21 All. 159.

⁶ *Baroda Kanta Sarkar*, (1915) 16 Cr. L. J. 620; *Muhammad Kazem Ali v. Jorabdi Naskar*, (1919) 46 Cal. 986.

⁷ *Mahesh Chandra Dhupi*, [1940] 1 Cal. 465.

⁸ *Ramajirav Jirajirav*, (1875) 12 B. H. C. 1.

for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

COMMENT.—Sections 191 and 192 define the offences punishable under this section. The first para applies only to cases in which the false evidence is given in a judicial proceeding, the second, to all other cases. If the offence is committed in any stage of a judicial proceeding it is more severely punishable than when it is committed in a non-judicial proceeding.

Intention is the essential ingredient in the constitution of this offence. If the statement was false, and known or believed by the accused to be false, it may be presumed that in making that statement he intentionally gave false evidence.

1. 'Any stage of a judicial proceeding.'—A statement recorded by a Magistrate, in the course of a police investigation under s. 164 of the Criminal Procedure Code,¹ or in an inquiry into the conduct of a village headman against whom reports have been made,² is not evidence in a stage of a judicial proceeding within the meaning of Explanation 2 to this section.

In the course of proceedings for execution of a decree in a Court which had no jurisdiction to entertain such proceedings the judgment-debtor made a false statement and produced a forged receipt. The Court made a complaint under s. 195 of the Criminal Procedure Code for prosecution of the judgment-debtor in respect of the said offences, it was held that if during the course of the proceedings which were *ultra vires* and illegal any offence under this or s. 471 of the Code was committed, it could not be said that it was committed in or in relation to, or by a party to, any judicial proceedings, in which evidence could be legally taken, and therefore the complaint must be dismissed.³

2. 'In any other case.'—A statement made in the course of a police investigation under s. 164 of the Criminal Procedure comes within these words.⁴

¹ *Purshottam Ishwar*, (1920) 23 Bom. L. R. 1, 45 Bom. 844, F.B.

² *Sumat Prasad*, [1942] All. 42.

³ *Daya Ram*, (1934) 57 All. 407.

⁴ *Purshottam Ishwar*, sup.

Contradictory statements.—Where a person makes two contradictory statements he may now be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.¹

If one of the statements is made before a Magistrate not having authority to carry on preliminary inquiry in the case, and the other before a Magistrate having jurisdiction, there will not be a sufficient basis for an alternative charge of giving false evidence.² But where a witness had made one statement on oath before a Third Class Magistrate, under s. 164 of the Criminal Procedure Code, and again another and totally inconsistent statement at the trial of the case before a First Class Magistrate, it was held that he could be convicted under the second—if not under the first—paragraph of this section.³

It is necessary to prove that both the contradictory statements were such that a charge of giving intentionally false evidence might have been made in regard to either of them or in regard to both of them in the alternative.⁴

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the law of British India or England, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

Giving or fabricating false evidence with intent to procure conviction of capital offence;

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

if innocent person be thereby convicted and executed.

COMMENT. This is an aggravated form of the offence of giving or fabricating false evidence made punishable by s. 193.

To constitute an offence under this section the accused must give false evidence intending thereby to cause some person to be convicted of a capital offence. A person who brings before a Court a witness whom he has tutored to tell a false story concerning a murder case before it, commits an offence under this section.⁵

195. Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law of British India or England is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.

¹ *Ide* *ibid.* (b) to s. 236, Criminal Procedure Code.

² *Bhurma*, (1886) 11 Bom. 702, F.B.

³ *Khem*, (1899) 22 All. 115.

⁴ *Hari Charan Singh*, (1900) 27 Cal. 455.

⁵ *Sur Nath Bhadhuri*, (1927) 50 All. 365.

ILLUSTRATION.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

COMMENT.—This section is similar to the preceding section except as regards the gravity of the offence in respect of which the perjury is committed. The preceding section deals with perjury in the case of an offence punishable with death, this section deals with perjury of an offence punishable with transportation for life or imprisonment for a term of seven years or upwards. In the case of a person who burnt his own house and charged another with the act, it was held that he should not be convicted under this section, but under s. 211¹ but where A, with a view to having B convicted, assisted in concealing stolen railway pins in his house and field, it was held that A was properly convicted of an offence under this section.²

196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

COMMENT.—This section applies to those who make use of such evidence as is made punishable by ss. 193, 194 and 195. It must be read with ss. 191 and 192, and can only apply to the use of evidence which was false evidence within the meaning of s. 191, or fabricated evidence within the definition laid down in s. 192.³ A brought a suit upon a bond and at the trial sought to support his claim by a letter fabricated probably for the purpose of enabling him to get the bond registered by a registrar. It was held that even if the letter was fabricated for use before the registrar, it was no valid objection to A's conviction.⁴

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing false certificate.

COMMENT.—Several laws require a certificate of some matter to be given. The offence of certifying in any of these, knowing or believing that the certificate is false, is put on the same footing as the offence of giving false evidence. The certificate must, however, be false in a material point. The issuing or signing must be by the officer or person authorized to certify.

Ingredients.—The section has two essentials:—

1. Issuing or signing of a certificate—
 - (a) required by law to be given or signed, or
 - (b) relating to a fact of which such certificate is by law admissible in evidence.
2. Such certificate must have been issued or signed knowing or believing that it is false in any material point.

¹ *Bhugwan Ahir*, (1867) 8 W.R. (Cr.)

² *Rameshar Rai*, (1877) 1 All. 379.

³ *Lakshmajee*, (1884) 7 Mad. 289, 290.

⁴ *Ibid.*

The expression "by law admissible in evidence" means that the certificate should by some provision of law be admissible in evidence as such a certificate without further proof.¹ A medical certificate is such a certificate and the issue or use of a false medical certificate does not render a person liable under this section or s. 196.²

198. Whoever corruptly uses or attempts to use any such certificate
Using as true a certificate known to be false. as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

COMMENT.—This section is connected with s. 197 just as s. 196 is connected with ss. 193, 194, and 195.

199. Whoever, in any declaration made or subscribed by him, which
False statement made in declaration which is by law receivable as evidence. declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

COMMENT.—This section makes the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have, on being made, the same effect as the compulsory declarations referred to in ss. 51 and 191.³ Voluntary declarations are thus placed on the same level as compulsory declarations.

Ingredients.—This section requires three essentials:—

1. Making of a declaration which a Court or a public servant is bound or authorised by law to receive in evidence.
2. Making of a false statement in such declaration knowing or believing it to be false.
3. Such false statement must be touching any point material to the object for which the declaration is made or used.

200. Whoever corruptly uses or attempts to use as true any such
Using as true such declaration knowing it to be false. declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

COMMENT.—This section is connected with the last section just as s. 198 is

¹ *Mahabir Thakur*, (1916) 23 C. L. J. 433; *Kumar Choudhuri*, (1936) 16 Pat. 21; *Prafulla Kumar Khara*, [1942] 1 Cal. 573. ² *Prafulla Kumar Khara*, sup. ³ *A. Vedamuttu*, (1868) 4 M. H. C. 185; *Asgarali*, [1943] Nag. 547.

with s. 197 or s. 196 with ss. 193, 194 and 195. The person who uses a false declaration is made liable as one who makes it.

201. Whoever, knowing or having reason to believe that an offence has been committed,¹ causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

Causing disappearance of evidence of offence, or giving false information to screen offender—

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years. shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

if punishable with transportation;

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

if punishable with less than ten years' imprisonment.

ILLUSTRATION.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

COMMENT.—Object.—This section relates to the disappearance of any evidence of the commission of an offence and includes also the giving of false information with the intention of screening an offender. Sections 202 and 203 relate to the giving or omitting to give such information, and s. 204 to the destruction of documentary evidence.

There are three groups of sections in the Code relating to the giving of information. First, ss. 118-20 deal with concealment of a design to commit an offence ; secondly ss. 176, 177, 181 and 182 deal with omission to give information and with the giving of false information ; and, thirdly, ss. 201-203 deal with causing the disappearance of evidence.

This section is intended to reach acts to which ss. 193 and 195 do not extend and not include acts falling under those sections.¹

Scope.—The Bombay and the Calcutta High Courts have held that this section does not relate to the principal offender but to persons other than the actual cri

¹ *Mussammat Sharina*, (1884) P. R. No. 42 of 1884.

minal who, by causing the evidence of the offence to disappear, assists the principal to escape the consequences of his crime.¹

The Allahabad High Court has held that a person who has actually committed a crime himself is none the less guilty of removing traces thereof if it is proved against him that he has done so.² Similarly, the Madras and the Patna High Courts are of opinion that this section and s. 203 are applicable to a person who is guilty of the main offence, though in practice a Court will not convict an accused both of the main offence and under this section.³ But if the commission of the main offence is not brought home to him, then he can be convicted under this section.⁴ The illustration to this section indicates very clearly that it applies only to persons other than principal offenders. But where it is impossible to say definitely that a person has committed the principal offence he cannot escape conviction under this section merely because there are grounds for suspicion that he might be the principal culprit.⁵

The Privy Council has laid down in *Begu v. King-Emperor*⁶ that a person accused of murder could be convicted under this section without any further charge. Five persons were charged under s. 302 with murder, and two of them were convicted. The evidence established that the other three had assisted in removing the body, knowing that a murder had been committed. Without any further charge being made, they were convicted under this section of causing the disappearance of evidence. It was held that the conviction without a further charge having been made was warranted by s. 237 of the Code of Criminal Procedure. In the light of this decision the Bombay and the Calcutta view is not tenable.

1. 'Knowing or having reason to believe that an offence has been committed.'—It must be proved that an offence, the evidence of which the accused is charged with causing to disappear, has actually been committed,⁷ and that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed.⁸

Help rendered to conceal crime.—Where a person through fear did not interpose to prevent the commission of a murder, and afterwards helped the murderers in concealing the body, it was held that he was not guilty of abetment of murder but was guilty of an offence under this section.⁹ A person who assists the actual murderers in removing the corpse of their victim to a distance from the place where the murder was committed is *prima facie* guilty of an offence under this section, until he can establish that he acted under compulsion.¹⁰ Where it appeared from the statement of the accused that he took from the men who, according to him, committed the murder, a jewel which was unquestionably the property of the deceased and he hid it and produced it later, it was held that the accused, when he had the jewel, had the intention of screening the offender, whoever he was, from legal punishment and so was guilty of an offence under this section.¹¹

¹ *Ghanasham*, (1906) 8 Bom. L. R. 538; *Torap Ali*, (1895) 22 Cal. 638; *Rimswami Gounden*, (1903) 27 Mad. 271.

² *Har Piari*, (1920) 49 All. 57.

³ *Chinna Gangappa*, (1930) 54 Mad. 68; *Rup Narain Kurmi*, (1930) 10 Pat. 140.

⁴ *Nebti Mandal*, (1939) 19 Pat. 369.

⁵ *Public Prosecutor v. Venkatamma*, (1932) 56 Mad. 63.

⁶ (1925) 52 I. A. 191, 6 Lah. 226.

27 Bom. L. R. 707, followed in *Mata Din*, (1929) 5 Luck. 255.

⁷ *Abdul Kadir*, (1880) 3 All. 279, F.B.

⁸ *Matuki Misser*, (1885) 11 Cal. 619.

⁹ *Goburdhun Bera*, (1806) 6 W. R. (Cr.) 80.

¹⁰ *Atar*, (1924) 47 All. 306; *Begu*, (1925) 52 I. A. 191, 6 Lah. 226, 27 Bom. L. R. 707, followed in *Mata Din*, (1929) 5 Luck. 255.

¹¹ *Public Prosecutor v. Munisami*, [1941] Mad. 503.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Intentional omission to give information of offence by person bound to inform.

COMMENT.—This section punishes the illegal omission of those who are by some law bound to give information, when such omission is intentional. It is similar to s. 176. See ss. 44 and 45, Criminal Procedure Code, as to the persons legally bound to give information.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Giving false information respecting an offence committed.

Explanation.—In sections 201 and 202 and in this section the word ‘offence’ includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

COMMENT.—The liability under this section attaches to any one who gives false information whether he is legally bound to furnish such information or not. The object of the Legislature is to discourage and punish the giving of false information to the police in regard to offences which are actually committed and which the person charged knows, or has reason to believe, has been actually committed. The section contemplates information volunteered by some person.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Destruction of document to prevent its production as evidence.

COMMENT.—Section 175 deals with omission to produce or deliver up any document to any public servant, this section deals with secretion or destruction of a document which a person may lawfully be compelled to produce in a Court. A person may secrete a document not only when the existence of the document is

unknown to other persons and for the purpose of preventing the existence of the document coming to the knowledge of anybody, but also when the existence of the document is known to others.¹

The offence under this section is an aggravated form of the offence punishable under s. 175. The offence applies whether the proceeding is of a civil or criminal nature.

CASES.—Secreting document.—Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond, snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, it was held that he had committed this offence.²

Destroying document.—Where a police-officer took down at first the report of the commission of a dacoity made to him, but subsequently destroyed that report and framed another and a false report of the commission of a totally different offence, he was held guilty of this offence.³

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment,¹ or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

False personation for purpose of act or proceeding in suit or prosecution.

COMMENT.—The offence punishable under this section is not merely cheating by using a fictitious name, but by falsely assuming to become other real person and in that character making an admissible statement, confessing judgment, or causing any process to be issued, etc.

Any fraudulent gain or a benefit to the offender is not an essential element of this offence.⁴ Where A personated B at a trial with B's consent, which was given to save himself from the trouble of making an appearance in person before a Magistrate, it was held that A was guilty of an offence under this section, and B was guilty of abetment of the offence.⁵

1. 'Confesses judgment,' i.e., allows a decree to be passed against himself.

Personation of imaginary person.—There is a conflict of opinion on the point whether a person commits an offence under this section by personating a purely imaginary person. The Calcutta High Court has held that a person by such personation commits an offence under this section.⁶ The Madras High Court, dissenting from the above ruling, has held that it is not enough to show the assumption of a fictitious name: it must also appear that the assumed name was used as a means of falsely representing some other individual.⁷

According to the English law also such an assumption of an imaginary person does not amount to any offence.⁸

¹ *Surenbikari Ray*, (1930) 58 Cal. 1051, S.B.

² *Subramania Ghanapathi*, (1881) 8 Mad. 261.

³ *Muhamad Shah Khan*, (1898) 20 All. 307.

⁴ *Suppakon*, (1863) 1 M. H. C. 450;

Kalya, (1903) 5 Bom. L. R. 138.

⁵ *Suppakon*, *ibid.*

⁶ *Bhūto Kukar*, (1862) 1 Ind. Jur. O. S. 123.

⁷ *Kadar Ravuttan*, (1867) 4 M. H. C. 18.

⁸ *Martin*, (1879) 5 Q. B. D. 34.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

COMMENT.—The concealment or removal of property contemplated in this section must be to prevent the property from being taken. Where the property is already taken and the removal is subsequent, the offence under this section is not committed.¹ The word 'taken' has been used in the sense of 'seized' or 'taken possession of.'²

A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property which has not already been attached by another creditor.³

Sections 206, 207 and 208 have the effect of rendering criminal all collusive modes by which creditors, or lawful claimants may be defeated of their just remedies. Sections 421-424 deal with fraudulent transfers.

Under this and the next section a civil suit must be actually pending before a Court, and not merely intended to be filed.⁴

207. Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

COMMENT.—This section deals with the receiver, acceptor, or claimer of property who tries to prevent its seizure as a forfeiture. It punishes the accomplice just as the preceding section punishes the principal offender.

¹ *Murli*, (1888) 8 A. W. N. 237.

(C. 110.

² *Sahetirao Baburao*, (1936) 38 Bom. L. R. 1192.

⁴ *M. S. Ponuscami*, (1930) 8 Ran. 268.

³ *Appa Mallya*, (1876) Unrep. Cr.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering decree for sum not due.

ILLUSTRATION.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

COMMENT.—This section prevents the abuse of getting some one to file a collusive suit for recovery of the whole property and suffering a decree to be passed. It punishes persons making fictitious claims in order to secure the property of the defendant against persons to whom he may become indebted in future.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Dishonestly making false claim in Court.

COMMENT.—This section relates to false and fraudulent claims in a Court of Justice. It is much wider than the last section as it applies to a person who is acting fraudulently or dishonestly. Not only must the claim be false within the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. The section punishes the making of a false claim. The offence will be complete as soon as a suit is filed. If a person applies for the execution of a decree which has already been executed his act will be an offence under the next section.¹

210. Whoever fraudulently obtains¹ a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied² or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining decree for sum not due.

¹ *Begun Mahloon*, (1869) 12 W. R. [1946] Nag. 680.
³⁷ (Cr.); *Bismilla Khan v. Rambhau*,

COMMENT.—This section is the counterpart to s. 208 in respect of fraudulent decrees, just as s. 207 is the counterpart to s. 206 in respect of fraudulent transfers and conveyances, the object of the Code being to strike both parties alike with the same penalty. This section, taken together with s. 208, will enable both plaintiff and defendant to a fraudulent or collusive suit or execution to be dealt with alike.

1. 'Obtains.'—The offence is committed when the decree is fraudulently obtained and the fact that the decree has not been set aside, though admissible to prove that there was no fraud, is not a bar to a prosecution under the section.¹

2. 'Causes a decree or order to be executed . . . after it has been satisfied.'—The mere presentation of an application for the execution of a decree already executed will not be sufficient. The accused must have caused the decree to be executed against the opposite party after it had been satisfied;² or obtained an order for attachment for a sum already paid.³ Where the decree-holder does not want to proceed with the execution and gets his execution application dismissed he cannot be convicted of an offence under this section.⁴

The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree-holder from being convicted of an offence under this section.⁵

211. Whoever, with intent to cause injury¹ to any person, institutes or causes to be instituted any criminal proceeding² against that person, or falsely charges³ any person with having committed an offence, knowing that there is no just or lawful ground⁴ for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both; and if such criminal proceeding be instituted⁵ on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section includes two distinct offences:—

(1) Actually instituting or causing to be instituted false criminal proceedings against a person.

(2) Preferring a false charge against a person.

The first assumes the second, but the second may be committed where no criminal proceedings follow.

The necessary ingredients to constitute either of the above offences are—

(1) The criminal proceedings must be instituted, or the false charge made, with intent to injure.

(2) The criminal proceedings must be instituted, or the false charge must

¹ *Molla Fuzla Karim*, (1905) 33 Cal. 193.

² *Shama Charan Das v. Kasi Naik*, (1896) 23 Cal. 971.

³ *Hikmahullah Khan v. Sakina Begam*, (1930) 53 All. 416.

⁴ *Bismilla Khan v. Rambhau*, [1946]

Nag. 686.

⁵ *Madhub Chunder Morumdar v. Norodeep Chunder Pundit*, (1888) 16

Cal. 126; *Mutturaman Chetti*, (1881)

4 Mad. 325; *Pillala*, (1885) 9 Mad. 101.

be made, without just or lawful grounds, in other words, it must be made maliciously.

Difference is made in punishment according as the charge relates to offences punishable with imprisonment which may extend to seven years or more or otherwise.

The mere making of a false charge is punishable under the first part of the section. If a case gets no further than a police inquiry, it falls within that part. But under the second part there should be an actual institution of criminal proceedings on a false charge.¹ Two conditions are necessary before the enhanced punishment provided in the second paragraph could be inflicted: (1) proceedings on the false charge should have been actually instituted, and (2) the false charge must be in respect of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards.

Sections 182 and 211.—According to the Bombay High Court there is a clear distinction between a false charge which falls under s. 211 and false information given to the police, in which latter case the offence falls under s. 182. A person prosecuting another under s. 182 need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to be false, with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under s. 211, on the other hand, proof of the absence of just and lawful ground for making the charge is an important element.² If the information conveyed to the police amounts to the institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence, then the person giving such information is guilty of an offence under s. 211. In such a case, s. 211 is, and s. 182 is not, the appropriate section under which to frame a charge. Section 182, when read with s. 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the falsely charging of a defined person with an offence as defined in the Penal Code.³

The Calcutta, the Madras, the Allahabad and the Patna High Courts differ from the view of the Bombay High Court.

The Calcutta High Court has ruled that a prosecution for a false charge may be under s. 182 or s. 211, but if the false charge was a serious one, the graver s. 211 should be applied and the trial should be full and fair.⁴ Where a false charge is made to the police of a cognizable offence the offence committed by the person making the charge falls within the meaning of s. 211 and not s. 182.⁵

The Madras High Court has held that there is no error in a conviction under s. 182, when the false charge made before the police was punishable under the final clause of s. 211. The High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver offence. Whether it will do so, or not, is a question, not of law, but of expediency on the facts of the particular case.⁶

The Allahabad High Court has held that where a specific false charge is made,

¹ *Karsan Jsang*, [1941] 43 Bom. L. R. 858, (1940) Bom. 22.

² Per Ranade, J., in *Raghavendra v. Kashinathbhat*, (1894) 19 Bom. 717, 725.

³ *Apaya*, (1918) 15 Bom. L. R. 574.

⁴ *Sarala Prasad Chatterjee*, (1904) 32 Cal. 180, followed in *Gati Mandal*, (1905) 4 C. L. J. 88.

⁵ *Giridhari Naik*, (1901) 5 C. W. N. 727.

⁶ (1872) 7 M. H. C. (Appx.) 5.

the proper section, for proceedings to be adopted under, is s. 211.¹ Although it is difficult to see what case would arise under s. 211 to which s. 182 could not be applied yet s. 182 would apply to a case which might not fall under s. 211. The offence under s. 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no steps towards the institution of such criminal proceedings. There is no restriction imposed by the Penal Code or by the Criminal Procedure Code upon the prosecution of an offence either under s. 182 or s. 211. It appears that it has been left to the discretion of the Court to determine when and under what circumstances prosecution should be proceeded with under ss. 182 and 211.² The soundness of this view is doubted in subsequent cases.³

The Patna High Court has followed the view of the Calcutta High Court.⁴

The Lahore High Court has held that an offence under s. 182 is included in the more serious offence under s. 211 and a prosecution for a false charge may be either under s. 182 or s. 211 though clearly if s. 211 apply and the false charge is serious, prosecution should be under s. 211.⁵

The Rangoon High Court is of opinion that an offence under s. 211 includes an offence under s. 182, but the converse does not hold good.⁶ Where the accused laid a false charge of robbery and hurt in an information before the police, which was, after inquiry, thrown out, and subsequently the accused lodged a complaint in Court for the same offence which the Magistrate dismissed as false on the police report, it was held (differing from the above case that the accused committed an offence which came both within the purview of s. 182 and s. 211 but he should be prosecuted under s. 211 as it was a more serious offence.⁷

1. 'Intent to cause injury.'—This is an essential part of the offence.⁸ The phrase is precisely the same as the English legal term "maliciously."

2. 'Institutes or causes to be instituted any criminal proceedings.'—Under this section 'instituting a criminal proceeding' may be treated as an offence in itself apart from 'falsely charging' a person with having committed an offence. There are two modes in which a person aggrieved may seek to put the criminal law in motion: (1) by giving information to the police (Criminal Procedure Code, s. 154), and (2) by lodging a complaint before a Magistrate (Criminal Procedure Code, ss. 199, 200). A person who sets the criminal law in motion by making to the police a false charge in respect of a cognizable offence institutes criminal proceedings.⁹ But as the police have no power to take any proceedings in non-cognizable cases without orders from a Magistrate, a false charge of such offence, made to the police, is not an institution of criminal proceedings, but merely a false charge.¹⁰ The distinction between cognizable and non-cognizable offences relates to the powers of the police only, and it will, therefore, seem that the false charge

¹ *Jugal Kishore*, (1886) 8 All. 382.

² *Per Edge, C. J.*, in *Raghu Tewari*, (1893) 15 All. 336, 338.

³ *Kashi Ram*, (1924) 22 A. L. J. R. 829; *Samokhan*, (1924) 26 Cr. L. J. 504.

⁴ *Daroga Gope*, (1925) 5 Pat. 33.

⁵ *Nota Ram*, [1942] Lah. 765. See *Muthra v. Rooria*, (1870) P. R. No. 16 of 1870; *Todur Mal v. Mussammat Bholi*, (1882) P. R. No. 14 of 1882.

⁶ *Rambrose*, (1928) 6 Ran. 578.

⁷ *Ma Paw*, (1930) 8 Ran. 499.

⁸ *Gopal Dhumuk*, (1881) 7 Cal. 96.

⁹ *Jijibhai Govind*, (1896) 22 Bom. 596; *Karim Buksh*, (1888) 17 Cal. 574, F.B.; *Parahu*, (1883) 5 All. 598; *Nanjunda Rao*, (1896) 20 Mad. 79; *Mst. Binia*, [1937] Nag. 838.

¹⁰ *Karim Buksh*, sup.

of any offence, whether cognizable or non-cognizable, before a Magistrate is an institution of criminal proceedings.

3. 'Falsely charges.'—The word 'charges' means something different from 'gives information.' The true test seems to be, does the person who makes the statement which is alleged to constitute the 'charge' do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made.¹ The false charge must be made to a Court, or to an officer who has power to investigate and send it up for trial.² Where the tribunal before whom the complaint is made is not competent to take any action direct or indirect to punish the persons complained against, it cannot be said that the accused 'charged' such persons with any offence or that his intention necessarily was that action should be taken against them.³ A false petition to the Superintendent of Police, praying for the protection of the petitioners from the oppression of a Sub-Inspector, which may be effected by some departmental action, does not amount to such a false charge.⁴ It is enough that a false charge is made though no prosecution is instituted thereon.⁵ Where a person who gives false information as to the commission of an offence merely states that he suspects a certain other person to be the offender, it may be that he would not be liable under this section, but where it is clear that the informant's intention was not merely that the police should follow up a clue but that they should put the alleged offender on trial, the informant is guilty of an offence under this section.⁶

Bare statement is not false charge.—A statement to the police of a suspicion that a particular person has committed an offence is not a charge within the meaning of this section, nor does it amount to institution of criminal proceedings; and a conviction cannot be had on proof that the suspicion was unfounded.⁷ The accused made a report to the police that his buffalo had been poisoned and that he suspected two persons whom he named of having administered the poison. The police made an inquiry and reported that there was no case of poisoning and the charge was struck out. One of the persons then brought a complaint under this section against the accused. It was held that the report to the police did not amount to a charge of a criminal offence.⁸

Statement under s. 162, Criminal Procedure Code.—A statement under s. 162, Criminal Procedure Code, in answer to questions put by a police-officer making an investigation under s. 161 of the Code, cannot be made the basis of a prosecution under this section.⁹

4. 'Knowing that there is no just or lawful ground.'—This expression is the equivalent of the English technical phrase "without reasonable or probable cause," which means an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circum-

¹ *Rayan Kutti*, (1903) 26 Mad. 640, 643; *Nihala*, (1872) P. R. No. 14 of 1872.

² *Jamona*, (1881) 6 Cal. 620; *Sivan Chelli*, (1909) 32 Mad. 238, overruling *Ramana Gowd*, (1908) 81 Mad. 506; *Mathura Prasad*, (1917) 39 All. 715.

³ *Bhawani Sahai*, (1932) 13 Lah. 368.

⁴ *Abdul Hakim Khan Chaudhuri*, (1931) 39 Cal. 334.

⁵ *Abul Hasan*, (1877) 1 All. 497; *Chenna Malti Gowda*, (1908) 27 Mad. 129.

⁶ *Parmeswar Lal*, (1925) 4 Pat. 472.

⁷ *Bramanund Bhattacharjee*, (1881) 8 C. L. R. 233; *Karigowda*, (1894) 19 Bom. 51.

⁸ *Abdul Ghafur*, (1924) 6 Lah. 28.

⁹ *Ramana Gowd*, sup.; *Krishna Bapadithaya*, (1909) 20 M. L. J. 132.

stances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be :

First, an honest belief of the accuser in the guilt of the accused ;

secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion ;

thirdly, such belief must be based upon reasonable grounds ; that is, such grounds as would lead any fairly cautious man in the defendant's situation so to believe ;

fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.¹

A person may, in good faith, institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them but in neither case has he committed an offence under this section. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings.²

In the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the complainant affords very strong evidence of reasonable and probable cause.³

5. 'If such criminal proceeding be instituted.'—There is a divergence of views between the Calcutta, the Madras and the Patna High Courts on the one hand, and the Allahabad and the Lahore High Courts on the other, on the question whether the latter part of the section applies to such cases of complaints to the police which are disposed of without a formal magisterial inquiry. A full bench of the Calcutta High Court has held that the latter part would apply to such cases where the charge related to the more serious offence.⁴ This case is followed by the Madras,⁵ and the Patna⁶ High Courts. The test to apply is,—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made ?⁷

The Allahabad High Court has, on the other hand, held that to constitute the offence defined in the second paragraph of this section, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the police, the making of such charge does not amount to institution of criminal proceedings, and the offence committed will fall within the first paragraph, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph.⁸ The former Chief Court of the Punjab held likewise.⁹

Civil remedy.—A person aggrieved by a false charge may, if he choose, sue in a civil Court for damages for malicious prosecution, instead of taking criminal proceedings under this section.

¹ *Hicks v. Faulkner*, (1878) 8 Q.B.D. 107, 171.

² *Chidda*, (1871) 3 N. W. P. 327 ; *Murad*, (1893) P. R. No. 29 of 1894.

³ *Parimi Bapiraju v. Bellamkonda*, (1866) 3 M. H. C. 238.

⁴ *Karim Buksh*, (1888) 17 Cal. 574, F.S.

⁵ *Nanjunda Rau*, (1896) 20 Mad.79

⁶ *Parmeshwar Lal*, (1925) 4 Pat. 472.

⁷ *Mallappa Reddi*, (1903) 27 Mad. 127, 128.

⁸ *Bishreshar*, (1898) 16 All. 124 ; *Pitam Rai*, (1882) 5 All. 215.

⁹ *Sultan*, (1887) P. R. No. 3 of 1888 ; *Khan Bahadar*, (1888) P. R. No. 26 of 1888 ; *Hamayun*, (1907) P. R. No. 26 of 1908.

CASES.—Where a man burnt his own house and charged another with the offence, it was held that he had committed an offence under this section and not one under section 195.¹ A false charge of dacoity was made to a police-officer, who referred it to a Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was tried under this section. It was held that he had instituted criminal proceedings within the meaning of the section.²

False charge should be made to Court or officer having jurisdiction to investigate.—A woman appeared before the Station Staff Officer and accused a non-commissioned officer of rape, and, after a military inquiry the military authority held that the charge was false and directed the complainant to be prosecuted under this section. The conviction was set aside, as the false charge was not made to a Court having jurisdiction.³ Where the accused laid a charge of mischief by fire at a police station, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from a Deputy Magistrate, to whom he had sent the case for a judicial inquiry; passed an order to prosecute the accused, it was held that the order of the District Magistrate was bad, as the matter of the false charge had not come before him in the course of judicial proceedings.⁴

212. Whenever an offence has been committed whoever harbours

Harbouring offender— or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which if a capital offence; may extend to five years, and shall also be liable to fine ;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, if punishable with transportation for life, or with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

“Offence” in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 ; and every such act shall, for the purposes of this section, be

¹ *Bhugwan Ahir*, (1867) 8 W. R. (Cr.) 65.

² *Nanjunda Rao*, (1899) 20 Mad. 79.

³ *Jamoonah*, (1881) 6 Cal. 620.

⁴ *Haibat Khan*, (1905) 33 Cal. 30.

deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

ILLUSTRATION.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

COMMENT.—This section applies to the harbouring of persons who have actually committed some offence under the Penal Code or an offence under some special or local law, when the thing punishable under such special or local law is punishable with imprisonment for a term of six months or upwards. It supposes that some offence has actually been committed, and that the harbourer gives refuge to one whom he knows or has reason to believe to be the offender with the intention of screening him from legal punishment. It does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation.¹

The section deals with that class of offenders who are known as “accessories after the fact” under the English law. An ‘accessory after the fact’ is one who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon.

Exception.—The Exception only extends to cases where harbour is afforded by a wife or husband. No other relationship can excuse the wilful receipt or assistance of felons; a father cannot assist his child, a child his parent, a brother his brother, a master his servant, a servant his master.

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment.

Taking gift, etc., to screen an offender from punishment—

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with imprisonment not extending to

¹ *Ramrajchoudhury. (1945) 24 Pat. 604.*

ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

COMMENT.—The compounding of a crime, by some agreement not to bring the criminal to justice if the property is restored or a pecuniary or other gratification is given, is the offence punished by this and the following section. It is the duty of every State to punish criminals. No individual has, therefore, a right to compound a crime because he himself is injured and no one else.

Ingredients.—The section has two essentials.—

1. A person accepting or attempting to obtain any gratification or restitution of property for himself or any other person.

2. Such gratification must have been obtained in consideration of (a) concealing an offence, or (b) screening any person from legal punishment for an offence, or (c) not proceeding against a person for the purpose of bringing him to legal punishment.

Scope.—This section applies only where there has been an actual concealment of an offence, or screening of a person from legal punishment, or abstention from proceeding criminally against a person, and, as consideration for the same, there has been an acceptance of, or attempt to obtain, or agreement to accept, any gratification or restitution of property. It has no application where only an acceptance of, or attempt to obtain, or agreement to accept, any gratification or restitution on a promise to conceal, screen or abstain, is proved and nothing more.¹

The section does not apply where the compounding of an offence is legal.

Mere suspicion.—This section is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence and not when there is merely a suspicion of his having committed some offence.²

214. Whoever gives or causes, or offers or agrees to give or cause, Offering gift or restoration of property in consideration of screening offender - any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which if a capital offence, may extend to seven years, and shall also be liable to fine ;

and if the offence is punishable with transportation for life, or with if punishable with transportation for life, or with imprisonment, imprisonment which may extend to ten years, shall be punished with imprisonment of either descrip-

¹ *Hemchandra Mukherjee*, (1924) 52 Cal. 151.

² *Girish Myle*, (1896) 23 Cal. 420;

Sanlal Gordhandas, (1918) 15 Bom. L. R. 694, 37 Bom. 658.

tion for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

ILLUSTRATIONS. [*Repealed by Act X of 1882.*]

COMMENT.—The preceding section punishes the receiver of a gift in consideration of compromising an offence, whereas this section punishes the offerer of the gift.

Ingredients.—This section has two essentials.—

1. Offering any gratification or restoration of property to some person.
2. Such offer must have been in consideration of the person's (a) concealing an offence or (b) of his screening any person from legal punishment for an offence, or (c) of his not proceeding against a person, for the purpose of bringing him to legal punishment.

The section presupposes the actual commission of an offence or the guilt of the persons screened from punishment. It is not the intention of the Legislature to punish the giving of gratification under a delusion that an offence had been committed or that a person was guilty of such offence. The intention is to discourage malpractices, when offences have really been committed or when persons really guilty are screened, and not to ensure general veracity on the part of the public in regard to imaginary offences or offenders.

The section includes the offer of a bribe by the person who has committed the offence that it is desired to screen.¹

Section 345 (1) of the Criminal Procedure Code enumerates the offences that can be lawfully compounded.

215. Whoever takes or agrees or consents to take¹ any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code,² shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence,³ be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Taking gift to help to recover stolen property, etc.

COMMENT.—*Scope.*—This section is intended to apply to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. There is nothing in this section which should exclude an actual thief from liability under it if in addition to committing theft he also tries to realise money by a promise to

¹ *Karuppannen*, (1882) 1 Weir 194.

return the stolen article. An actual thief or a person suspected to be the thief can be convicted under this section.¹

Ingredients.—This section has three essentials.—

1. Taking or agreeing or consenting to take any gratification under pretence or on account of helping any person to recover any moveable property.

2. The owner of such property must have been deprived of it by an offence punishable under the Penal Code.

3. The person taking the gratification must not have used all means in his power to cause the offender to be apprehended and convicted of the offence.

Object.—The primary aim of this section is to punish all trafficking in crime by which a person, knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime, while screening the offender from justice. The clear meaning of the section is that it is an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of a man who can show that he used all means in his power to cause the apprehension of the offender.²

1. 'Takes or agrees or consents to take.'—These words imply that the person taking the gratification and the person giving it have agreed not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take. If a person has actually taken a gratification from another, it must be assumed that he agreed to take, and the other to give it in that particular form or shape; but where the gratification has not actually passed and there is a disagreement as to the form or shape that the gratification is to take, the idea of agreement or consent is negatived. Thus, where two persons offered to secure the return of bullocks stolen from a third person for Rs. 30, and the third person refused but offered Rs. 15, which offer was rejected by the two persons, it was held that they had committed no offence.³ This case has been dissented from in a case in which the complainant had some of his buffaloes stolen and the accused proposed to the complainant that if the complainant gave Rs. 200 and promised to take no steps to prosecute the thieves he would procure the restoration of the stolen cattle. The complainant did not agree to this proposal and reported the matter to the police. It was held that the accused was guilty of an attempt to commit the offence specified in this section.⁴

2. 'Deprived by any offence punishable under this Code.'—The act by which the property is deprived must be the subject of an offence punishable under the Penal Code. A person lost a cow from the grazing ground. He heard that the cow was with the accused. The accused took Rs. 12 from the owner of the cow and promised to restore it in ten days. Subsequently he refused to return either the money or the cow. It was held that no offence under this section was committed.⁵ A bullock was tied up during the night in its owner's house and was missing next morning. Three days later the accused, who promised to return the bullock for a sum of money and who were paid that sum, took the owner direct to a spot in the jungle and pointed out the bullock tied up to a tree. The accused were convicted under this section. It was held that the tying up of the bullock in the jungle

¹ *Mukhtara*, (1924) 46 All. 915; *Deo Suchit Rai*, [1947] A. L. J. 48, F.B., overruling *Muhammad Ali*, (1900) 28 All. 81, and *Mungu*, (1927) 50 All. 186.

² *Yusuf Mian*, [1938] All. 681.

³ *Chittar*, (1898) 20 All. 380.

⁴ *Hargayan*, (1923) 45 All. 159.

⁵ *Sharfa*, (1914) P. R. No. 9 of 1915; *Bageshwari Ahir*, (1931) 11 Pat. 392.

would come within the scope of the section as it would prevent the bullock from going back to the owner's house, which it would normally do if it had only strayed and not been stolen.¹

3. 'Unless he uses all means in his power to cause the offender to be apprehended.'—It is not for the prosecution to prove the negative that the accused did not use all his power to cause the offender to be apprehended. It is for the defence to establish that the accused did all in his power to cause the offender to be apprehended.²

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody,

Harbouring offender who has escaped from custody or whose apprehension has been ordered—

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if the offence for which the person was in custody if a capital offence ; or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

•
if punishable with transportation for life, or with imprisonment.

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

¹ *Yusuf Mian*, [1938] All. 681.

² *Dev Suchit Rai*, [1947] A. L. J. 44, F. B.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

COMMENT.—To establish an offence under this section it must be shown (1) that there has been an order for the apprehension of a certain person as being guilty of an offence; (2) knowledge by the accused party of the order; and (3) the harbouring or concealing by the accused of the person with the intention of preventing him from being apprehended.¹

The word 'knowing' imports knowledge of something actual by means of authentic or authoritative information. It implies a fact which can be known.²

This section may be compared with s. 212. The latter deals with the offence of harbouring an offender who having committed an offence absconds. This section deals with harbouring an offender who has escaped from custody after being actually convicted or charged with the offence, or whose apprehension has been ordered; the latter offence is in the eye of the law more aggravated, and a heavier punishment is, therefore, awarded for it. It is thus an aggravated form of the offence punishable under s. 212.

The section only takes into consideration cases where the man who is harboured is wanted for an offence for which a maximum sentence of at least one year's imprisonment is provided. No provision is made for cases where he is wanted for offences for which the maximum sentence is less than one year.³

216A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

COMMENT.—This section enables the Court to inflict enhanced punishment where the persons harboured are robbers or dacoits or where they intended to commit robbery or dacoity. An offence under this section will also be an offence under s. 212, but in the case of robbers or dacoits this section is the proper one to apply.

216B. [Repealed by Act VIII of 1942, s. 3.]

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punish-

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

¹ *Eswaremurthi*, (1941) 71 I. A. 83, 40 Bom. L. R. 844, [1945] Mad. 237.

² *Ibid.*

³ *Deo Baksh Singh*, (1942) 18 Luck. 617.

ment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—This section and the three following sections deal with disobedience on the part of public servants in respect of official duty.

This section punishes intentional disobedience of any direction of law on the part of a public servant to save a person from punishment. It is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was justly liable to legal punishment. A public servant charged under this section is equally liable to be punished, although the intention which he had of saving any person from legal punishment was founded upon a mistaken belief as to that person's liability to punishment.¹

'Legal punishment' does not include departmental punishment.²

218. Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

COMMENT.—The section deals with intentional preparation by a public servant of a false record with the object of saving or injuring any person or property. The correctness of the record is of the highest importance both to the State and to the public. The intention with which the public servant does the act mentioned in the section is an essential ingredient of the offence punishable under it.

It is not necessary that the incorrect document should be submitted to another person, or otherwise used by the writer.

A public servant commits the offence punishable under this section if the person whom he intends to save from legal punishment is himself.³

Actual commission of offence not necessary.—The actual guilt or innocence of the alleged offender is immaterial if the accused believes him guilty and intends to screen him.⁴

CASES.—Public servant framing incorrect record to save person from legal punishment.—A Superintendent of Police gave a warrant under the Gambling Act to D, a Sub-Inspector, to arrest persons found gambling in a certain house. In order to save two persons from legal punishment for having committed an offence

¹ *Amiruddeen*, (1878) 3 Cal. 412, 413. 42.

² *Jungle Lal*, (1873) 19 W.R. (Cr.) 40.

³ *Nand Kishore*, (1897) 19 All. 305, (Cr.) 68. ⁴ *Hurdul Surma*, (1867) 3 W. R.

overruling *Gauri Shankar*, (1888) 6 All.

under the Gambling Act in that house, D framed a first information and a special diary incorrectly. It was held that he was properly charged with, and found guilty of, having committed an offence under this section.¹ A report of the commission of a dacoity was made at a police station. The police-officer in charge of the station took down the report which was made to him, but subsequently destroyed the report and framed another and a false report of the commission of a totally different offence to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant. It was held that the police-officer was guilty of offences punishable under ss. 204 and 218.² Where it was proved that the accused's intention in making a false report was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, it was held that he was guilty of this offence.³

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Public servant in judicial proceeding corruptly making report, etc., contrary to law.

COMMENT.—This section should be read in conjunction with s. 77. It contemplates some wilful excess of authority, in other words, a guilty knowledge superadded to an illegal act. This section and the following one deal with corrupt or malicious exercise of the power vested in a public servant for a particular purpose.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

COMMENT.—This section is a further extension of the principle laid down in the preceding section. It is general in its application, whereas the last section applied to judicial officers. It is intended to prevent illegal commitments for trial or illegal confinement.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Intentional omission to apprehend on the part of public servant bound to apprehend.

with imprisonment of either description for a term which may extend

¹ *Drodhar Singh*, (1899) 27 Cal. 144. 20 All. 307.

² *Muhammad Shah Khan*, (1898) ³ *Girdhari Lal*, (1886) 8 All. 658.

to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death ; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

COMMENT.—Sections 221, 222, and 223 provide for intentional omission to apprehend, or negligently suffering the escape of, offenders on the part of public servants bound to apprehend or to keep in confinement.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say : —

with transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years or if the person was lawfully committed to custody.

COMMENT.—This section is similar to the last section with the exception that the person to be apprehended has already been convicted or committed for an offence. It is thus an aggravated form of the offence made punishable by the last section.

223. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Escape from confinement or custody negligently suffered by public servant.

COMMENT.—This section further extends the principle laid down in the two preceding sections. It punishes a public servant who *negligently* suffers any person charged with an offence to escape from confinement. The last two sections deal with *intentional omission* to apprehend such person.

Ingredients.—This section has three essentials.—

1. The offender must be a public servant.
2. He must be legally bound to keep in confinement a person charged with or convicted of an offence or lawfully committed to custody.
3. He must negligently suffer such person to escape.

Lawful custody.—Unless the custody is lawful no offence under this section is committed. If a public servant has no right to keep a person in custody, he is not guilty of allowing that person to escape.¹

This section applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under a civil process.² The latter case would come under s. 225A.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence,¹ shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

COMMENT.—This and the section following relate to resistance or illegal obstruction offered to the lawful apprehension of any person. Sections 221-223 punish public servants who fail to apprehend or confine persons liable to be apprehended or confined.

¹ *Debi*, (1907) 29 All. 377.

² *Tafaulah*, (1885) 12 Cal. 190.

Ingredients.—The section deals with two kinds of offences.—

1. Resistance or illegal obstruction by a person to his lawful apprehension for any offence with which he is charged.

2. Escape or attempt to escape by a person from lawful custody for the offence with which he is charged or of which he has been convicted.

1. 'Escapes...from any custody in which he is lawfully detained for any such offence.'—Escape must be from the custody in which the person escaping has been detained legally. A person of the same name as the offender was arrested, tried and acquitted. Whilst under arrest he escaped from custody. It was held that he was not liable to be convicted under this section because he was not lawfully detained for any offence.¹ Escape from a custody by a thief, who was caught in the very act of stealing by a private person, at a time when the thief was being sent to the nearest police station in custody of a person who had not witnessed the offence, was held to be an offence under this section.² Where a person having been legally arrested was subsequently left unguarded and escaped, he was held guilty under this section.³

Explanation.—The Explanation does not require that a sentence of imprisonment must be made to run consecutively to a sentence imposed for the main offence of which the accused has been convicted.⁴

CASE.—The accused, a subject of an Indian State, was lawfully arrested by an Indian State police within the State territory, for an offence committed by him there. While in such custody, he passed through the British territory and escaped. He was arrested by the British police, and convicted under this section. It was held that the detention contemplated in this section should necessarily be for any of the offences mentioned in the Indian Penal Code or under any local or special law applicable to British India and that the accused could not be legally proceeded against under this section, in view of the fact that he was detained at the time of his escape by the State police for an offence which was said to have been committed within the State territory and which could not be described as an offence committed within British India.⁵

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

or, if the person to be apprehended, or the person rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprison-

¹ *Ganga Charan Singh*, (1893) 21 Cal. 337.

² *Potadu*, (1888) 11 Mad. 480; *Fakira*, (1893) 17 Mad. 103.

³ *Muppan*, (1895) 18 Mad. 401.

⁴ *Chokhu*, (1934) 86 Bom. L. R. 963.

⁵ *Billu*, [1940] Lab. 570.

ment of either description for a term which may extend to three years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.—Persons who offer resistance or illegal obstruction to the apprehension of other persons who have committed offences are punishable under this section. The preceding section punishes the offenders themselves. Section 180 deals with rescuing a prisoner of State or war, and s. 186, with rescuing in any other case.

'Rescue' is the act of forcibly freeing a person from custody against the will of those who have him in custody.

The act for which the person rescued is detained must amount to an offence under the Code. Thus an escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour,¹ or an escape from arrest under s. 55, Criminal Procedure Code,² will not fall under this section. If the apprehension is not lawful the person resisting it will not be guilty of any offence.

225A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both ; and

(b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

¹ *Shasti Churn Napti*, (1882) 8 Cal. 331. ² *Kandhaia*, (1884) 7 All. 67.

Omission to apprehend, or suffering of escape, on part of public servant, in cases not otherwise provided for.

COMMENT.—This section punishes intentional or negligent omission to apprehend on the part of a public servant not coming within the purview of s. 221, 222 or 223.

225B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

COMMENT.—This section is intended to meet cases not covered by s. 224 or s. 225. Under s. 225 a person, escaping from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour, or escaping from a jail in which he is confined by reason of his having failed to furnish security to be of good behaviour,¹ cannot be punished : under this section he can.

There must be an overt act of resistance or obstruction. If a person runs away to avoid an arrest, his act does not amount to resistance or obstruction.²

The apprehension or detention must be lawful. If the warrant is defective the rescue of the person arrested under such warrant is no offence under this section. The liberty of the subject cannot be trilled with, and every person can require by right that the Court ordering his arrest shall observe the law.³

CASES.—**Resistance to arrest without warrant justifiable.**—An arrest by a police-officer, without notifying the substance of the warrant to the person against whom the warrant is issued, as required by s. 80 of the Criminal Procedure Code, is not a lawful arrest, and resistance to such an arrest is no offence under this section.⁴ A person, about to be arrested, is entitled to know under what power the constable is arresting him and, if he specifies a certain power which the person knows the constable has not got, he is entitled to object to such arrest and escape from custody, such custody not being a lawful one. For a charge of escaping from lawful custody the prosecution must first establish that the constable who arrested the man had power to act under the specific authority that he claimed to have.⁵

Resistance to improper warrant justifiable.—A person cannot be convicted under ss. 225B and 353 when the warrant attempted to be executed was addressed to the person with a wrong description to which he did not answer,⁶ or when it was illegal owing to want of the seal of the Court,⁷ or when it did not contain the name of the person to be arrested,⁸ or for any other defect.⁹ But even if a Court has wrongly exercised its discretion in issuing a warrant, an accused escaping from

¹ *Muli*, (1920) 43 All. 185.

² *Annawadin*, (1923) 1 Ran. 218.

³ *Fattu*, (1932) 55 All. 109, 111, 112.

⁴ *Satish Chandra Rai v. Jodu Nandan Singh*, (1899) 26 Cal. 748.

⁵ *Appasami Mudaliar*, (1924) 47 Mad. 442.

⁶ *Debi Singh*, (1901) 28 Cal. 399.

⁷ *Mahajan Shrikh*, (1914) 42 Cal. 708.

⁸ *Jogendra Nath Laskar v. Hiralal*, (1924) 51 Cal. 902.

⁹ *Gokal*, (1922) 45 All. 142; *Gaman*, (1913) P. R. No. 16 of 1913; *Muhammad Bakhsh*, (1904) P. R. No. 16 of 1904.

the custody of the peon apprehending him or obstructing his apprehension would be guilty under this section.¹

Escape must be from lawful custody.—A peon who arrested the accused under a civil warrant made him sleep by his side in a house after nightfall. The accused escaped while the peon was asleep. It was held that the accused was liable under this section as the fact that the peon went to sleep did not in any way put an end to his custody, or affect the accused's duty to submit to the judgment of the law.² The accused was arrested by a process server, and after the arrest he managed to escape from custody, went inside his house, shut himself up there, and refused to come out. It was held that an offence under s. 186 was not established, but that the accused was guilty of the offence of escaping from lawful custody under this section.³

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

COMMENT.—This section punishes the criminal who is lawfully transported but who runs away from the place of transportation before the expiry of the term of transportation.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

COMMENT.—This section deals with those cases in which remission of punishment is made conditional by Government under s. 401 of the Code of Criminal Procedure.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The object of this section is to punish a person who intentionally insults in any way the Court administering justice. It is to preserve the prestige and dignity of the Court that this section is enacted. It lays down the highest sentence that could be inflicted for contempt of Court.

¹ *Puna Mahlon*, (1932) 11 Pat. 743. 271.

² *Ramarwami Konan*, (1908) 31 Mad. ³ *Jamna Das*, (1927) 9 Lah. 214.

Ingredients.—The essentials of the section are—

1. There must be (a) intentional insult, or (b) interruption to any public servant.
2. The public servant must have been sitting in any stage of a judicial proceeding.

The whole sitting of a Court for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding, and the necessary interval between the conclusion of one case and the opening of another is a stage in a judicial proceeding.¹

Acts, such as rude and contumelious behaviour, obstinacy, perverseness, prevarication, or refusal to answer any lawful question, breach of the peace or any wilful disturbance whatever, will amount to contempt of Court.

If the offence of contempt of Court is summarily dealt with under s. 480 of the Criminal Procedure Code, the maximum fine that can be imposed is Rs. 200.

CASES.—Contempt.—A person persisting in putting irrelevant and vexatious questions to a witness after warning;² a person making an impertinent threat to a witness in the box;³ a person sentenced to two hours' imprisonment and ordered to be kept in custody insulting the judge in the grossest manner;⁴ a person calling the trial Judge as "a prejudiced judge,"⁵ and a person stating in an application for transfer of a case that the Court had become hostile to him,⁶ were all held guilty of contempt of Court under this section.

Refusal to answer question.—Prevarication by a witness and refusal to answer a question amount to intentional interruption within the meaning of this section.⁷

No contempt.—A person leaving the Court when ordered to remain,⁸ or making signs from outside to a prisoner on his trial;⁹ a person listening to evidence after being told to leave the Court;¹⁰ a person using vulgar language for the purpose of emphasis;¹¹ a person walking out of the Court without answering the question whether he had any witness;¹² a person giving away in marriage a minor girl while she was in the custody of a guardian appointed by the Court;¹³ a person appearing as an assessor in Court dressed in a shirt and a cap;¹⁴ a person writing a letter to a Judge imputing unlawful act causing loss to him;¹⁵ a pleader saying that he 'resented' the remark of the Court and that another remark was 'improper,' and that a certain action of the Court was 'strange,'¹⁶ were held to have committed no offence under this section.

229. Whoever, by personation or otherwise, shall intentionally

Personation of a juror
or assessor. cause, or knowingly suffer himself to be returned,
empanelled or sworn as a juryman or assessor in

¹ *Salig Ram*, (1897) P. R. No. 16 of 1897. 217.

² *Azeemoola*, (1867) P. R. No. 44 of 1867. 218.

³ *Allu*, (1922) 45 All. 272.

⁴ *Venkatasami*, (1891) 15 Mad. 181.

⁵ *Venkatrao*, (1922) 24 Bom. L. R. 386, 46 Bom. 973.

⁶ *Narotam Das*, [1948] All. 186.

⁷ *Jaimal Shrawan*, (1878) 10 B. H. C. 69; *Gopi Chand*, (1917) P. R. No. 14 of 1918.

⁸ (1870) 1 Weir 215.

⁹ (1870) 1 Weir 214.

¹⁰ *Papa Naiken*, (1882) 1 Weir

¹¹ (1880) 1 Weir 216.

¹² *Abdul Rahiman*, (1899) 1 Weir 218.

¹³ *Kaulashia*, (1932) 12 Pat. 1, the offence committed was disobedience of a lawful order.

¹⁴ *Chhaganlal Ishwardas*, (1933) 35 Bom. L. R. 1025.

¹⁵ *Subordinate Judge, Hoshangabad v. Jawaharlal*, [1941] Nag. 304. Such a person would be guilty under the Contempt of Courts Act, XII of 1926, s. 2(3).

¹⁶ *Hakumal Rai*, [1948] Lah. 791.

any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—This section is intended to punish false personation of a juror or an assessor. It deals with two classes of cases—

- (1) Where the accused had guilty knowledge before he was returned, i.e., got himself enlisted as a juror or assessor.
- (2) Where he had such knowledge after he was returned.

Section 278, Criminal Procedure Code, enumerates the persons not entitled to serve as jurors or assessors. As to choosing a jury, see s. 276, Criminal Procedure Code : as to choosing of assessors, see s. 321.

Six sections provide punishment for false personation—

1. Section 140 punishes false personation of a soldier.
2. Section 170 punishes personating a public servant.
3. Section 171 punishes wearing a garb or carrying a token used by a public servant.
4. Section 171F punishes personation at an election.
5. Section 205 punishes false personation for the purpose of an act or proceeding in a suit or prosecution.
6. Section 229 punishes personation of a juror or assessor.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

The offences described in this Chapter relate to (I) Coins, and (II) Stamps.

(I) Coins.—

The offences relating to coin may be classified into three divisions :—

- (1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—

- (1) Counterfeiting coins (ss. 231, 232.)
- (2) Making or selling instrument for counterfeiting (ss. 233, 234.)
- (3) Possession of instrument for counterfeiting (s. 235.)
- (4) Abetting in British India the counterfeiting of coin out of India (s. 236.)
- (5) Importing or exporting of counterfeit coin (ss. 237, 238.)
- (6) Delivering counterfeit coin knowing it to be so (ss. 239, 240.)
- (7) Delivering counterfeit coin not known to be so when first possessed (s. 241.)
- (8) Possession of counterfeit coin knowing it to be so (ss. 242, 243.)

2. Alteration—

- (1) Diminishing the weight or altering the composition of any coin (ss. 246, 247.)
- (2) Altering appearance of any coin to pass it off as a different coin (ss. 248, 249.)
- (3) Delivering coin possessed with the knowledge that it is altered (ss. 250, 251.)

- (4) Possessing altered coin knowing it to be so (ss. 252, 253.)
- (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (s. 254.)
- 3. Acts of mint employees—
 - (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (s. 244.)
 - (2) Unlawfully taking from a mint any coining instrument (s. 245.)
- (II) Government stamps.—
 - (1) Counterfeiting a stamp (s. 255.)
 - (2) Possession of an instrument for counterfeiting a stamp (s. 256.)
 - (3) Making or selling instrument for counterfeiting a stamp (s. 257.)
 - (4) Sale of a counterfeit stamp (s. 258.)
 - (5) Possession of a counterfeit stamp (s. 259.)
 - (6) Using as genuine a stamp known as counterfeit (s. 260.)
 - (7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (s. 261.)
 - (8) Using a stamp known to have been before used (s. 262.)
 - (9) Erasure of mark denoting that a stamp has been used (s. 263.)
 - (10) Making, uttering, or dealing in, or selling, or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (s. 263A.)

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

“Coin” defined.

Queen’s coin is metal stamped and issued by the authority of the Queen, or by the authority of the Central Government or of the Government of any Presidency, or of any Government in the Queen’s dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen’s coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

ILLUSTRATIONS.

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company’s rupee is the Queen’s coin.
- (e) The “Farukhabad” rupee, which was formerly used as money under the authority of the Government of India, is Queen’s coin although it is no longer so used.

COMMENT.—The definition requires that a coin must be a metal *used for the time being as money*. Old coins not used as money are not coins under this definition. A coin of the time of Akbar¹ or Shahjahan² cannot, therefore, be deemed to be a coin. Similarly, a medal is not a coin, and if a person represents to an ignorant

¹ Bapu Yadav, (1874) 11 B. H. C. ² Khushali, (1806) 20 All. 141.
172.

person a medal as being money he cannot be convicted of passing a counterfeit coin.¹ But a person counterfeiting Kuldar and Jeypur gold mohurs is guilty of counterfeiting coin as they had a current value attached to them as coin.²

Legal tender not necessary.—Coin need not be a legal tender receivable at a value in rupee fixed by law. Gold mohurs which although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins “for the time being used as money.”³ The test of whether a particular piece of metal is money or not is the possibility of taking it into market and obtaining goods of any kind in exchange for it. For this, its value must be ascertained and widely known; that it is known to persons of special skill or information is not sufficient.⁴

It has been held that Murshidabad rupees stand on the same footing as ‘Farukhabad’ rupees which are King’s coin although no longer so used.⁵

231. Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting coin.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

COMMENT.—It is not necessary under this section that the counterfeit coin should be made with the primary intention of its being passed as genuine; it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such.⁶ The accused, at the request of some Nepalese, made for them in German silver a number of imitations of a current Nepalese coin. The coins were not intended originally to be passed as genuine coins, for it was stipulated that they should be made with hooks attached to them; but this was not done and the coins were handed over plain. It was held that the accused was guilty under this section.⁷ It is not essential for coins to be counterfeit that they should be exact resemblances of genuine coins. It is sufficient that they are such as to cause deception and may be passed as genuine.⁸

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen’s coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting Queen’s coin.

COMMENT.—The Code provides heavier punishment in cases of offences relating to King’s coin than those relating to foreign coins. The authors of the Code say: “We have proposed that the Government of India should follow the general practice of Governments in punishing more severely the counterfeiting of its own

¹ (1863) 1 Weir 219.

² *Kunj Beharee*, (1873) 5 N. W. P. 187.

³ *Ibid.*

⁴ *Bapu Yadav*, (1874) 11 B. H. C. 172.

⁵ *Dani*, (1905) 28 All. 62; *Baman*, 1902) P. R. No. 1 of 1903.

⁶ *Qadir Bakhsh*, (1907) 30 All. 93; *Amrit Sonar*, (1919) 4 P. L. J. 525; *Premsookh Dass*, (1870) P. R. No. 38 of 1870.

⁷ *Qadir Bakhsh*, *sup.*
⁸ *Amrit Sonar*, *sup.*

coin than the counterfeiting of foreign coin. It appears to us peculiarly advisable, under the present circumstances of India, to make this distinction. It is much to be wished that the Company's currency may supersede the numerous coinages which are issued from a crowd of mints in the dominions of the petty princes of India. It has appeared to us that this object may be in some degree promoted by the law as we have framed it. That coinage, the purity of which is guarded by the most rigorous penalties, is likely to be the most pure; and that coinage which is likely to be the most pure will be the most readily taken in the course of business."¹

'Counterfeiting' means causing one thing to resemble another. Where, therefore, a person removed the ring from a coin which had been used to form part of a necklace or other ornament, and worked up the face of the coin where the ring had been, it not being shown that any material part of the coin had at any time been removed, it was held that he was not guilty under this section.²

233. Whoever makes or mends, or performs any part of the process of making, or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

COMMENT.—In this as well as in the following section mere acts of preparation towards the offence of coining are made substantive offences such as the making of dies or other instruments used in the manufacture of coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

COMMENT.—'Possession' connotes the intention to exercise power or control over the object possessed and therefore necessarily implies that the possessor has been conscious of the possibility of exercising that power or control.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

¹ Note I, p. 134.

² *Muhammad Husain*, (1901) 23

and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

If Queen's coin.

COMMENT.—Mere possession of instruments and materials capable of counterfeiting coins is no offence. Possession of such instruments should be with the intention of counterfeiting coins and the intention must be proved. The accused was convicted of an offence under this section, he having in his possession three "dies" and some instruments for the purpose of counterfeiting coin. He was a goldsmith by occupation, and the instruments found with him were required for his work as a goldsmith. The dies were deficient and no complete counterfeit coin could be struck from them either singly or combined. It was held that it could not be inferred from the mere possession of the dies incapable of striking a complete coin that the accused intended to manufacture coins. The onus of proving the fitness of the materials for the purpose of counterfeiting coins was upon the prosecution.¹

236. Whoever, being within British India, abets the counterfeiting of coin out of British India shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin.

COMMENT.—Any person in India, whether a British subject or a foreigner, who supplies instruments or materials for the purpose of counterfeiting any coin, or assists in any other way, is punishable under this section. Abetment in British India must be complete.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

COMMENT.—The offence under this and the following section consists in an import or export, whether by sea or land, of any coin known by the importer, or which he has reason to believe, to be counterfeit.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of counterfeit of the Queen's coin.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with

Delivery of coin, possessed with knowledge that it is counterfeit.

¹ *Khadim Hussain*, (1924) 5 Lab. 392.

imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

COMMENT.—This section is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.

Three classes of offences are created by ss. 239 to 243 :

(1) Delivery to another of coin, possessed with the knowledge that it is counterfeit (ss. 239, 240).

(2) Delivery to another of coin as genuine, which when *first* possessed, the deliverer did not know to be counterfeit (s. 241).

(3) Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof (ss. 242, 243).

240. Whoever, having any counterfeit coin, which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—The offence under this section is an aggravated form of the offence described in the last section. This section does not apply to the actual coiner.¹ It must be established that the accused knew that the coins were counterfeit when he became possessed of them.²

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

ILLUSTRATION.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

COMMENT.—This section applies to a casual utterer of base coins. Section 239 deals with professional utterers.

¹ *Ahmad Shah*, (1892) P. R. No. 10 of 1892.

² *Dost Mohammad*, [1937] Nag. 183.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

COMMENT.—Mere possession of a counterfeit coin is an offence under this and the following section, even though no attempt is made to pass it off, provided it was kept for a fraudulent purpose and was originally obtained with guilty knowledge. Possession must be with intent to defraud.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

COMMENT.—The object of this section is to secure purity of coinage and its exact conformity to the legal standard against the act or omission of persons employed in mints. The law has fixed the weight and composition of various coins and has declared in what cases they shall be a legal tender.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking coining instrument from mint.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

COMMENT.—This section refers to any operation which alters the appearance of a coin with the intention that the said coin shall pass as a coin of a different description, e.g., gilding, silvering. If the weight of the coin is diminished, either s. 246 or s. 247 applies.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of coin, possessed with knowledge that it is altered.

COMMENT.—This and the following section are intended to punish persons who are traders in spurious or altered coins. They correspond to ss. 239 and 240. There must be both possession with knowledge and fraudulent delivery.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be

Delivery of Queen's coin possessed with knowledge that it is altered.

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

252. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

COMMENT.—Possession of debased or altered coin by the professional dealer, with fraudulent intention, is made punishable by this section. This and the next section resemble ss. 242 and 243. Under ss. 250 and 251 the accused is punished for uttering, under this section and the next he is punished for possessing a coin in respect of which the offence defined either in s. 246 or 247 has been committed.

253. Whoever fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248, or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

COMMENT.—Section 241 corresponds to this section. Where possession is acquired innocently but on subsequent knowledge that the coin is counterfeit if a person passes it off or attempts to pass it off as a genuine coin, he will be punished under this section.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either

Counterfeiting Government stamp.

description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

COMMENT.—This and the remaining sections of the Chapter deal with offences relating to Government stamps. These stamps are impressions upon paper, parchment, or any material used for writing, made by the Government mostly for the purpose of revenue.

An obliterated stamp can be a stamp in the ordinary use of the English language. A stamp does not cease to be a stamp because it is cancelled. A person selling a forged stamp, although it bears a cancellation mark, commits an offence of selling forged stamps.¹

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of instrument or material for counterfeiting Government stamp.

COMMENT.—This section resembles s. 235.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Government stamp.

COMMENT.—This section corresponds to s. 234.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

COMMENT.—This section resembles s. 239.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in

Having possession of counterfeit Government stamp.

¹ *Lowen*, [1914] 1 K. B. 144.

order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section corresponds to s. 243.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government stamp known to be counterfeit.

COMMENT.—This section corresponds to s. 254.

261. Whoever fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

COMMENT.—This section may be compared with ss. 246 and 248. It punishes (1) the effacing of a writing from a stamp, and (2) the removing of a stamp from a document.

262. Whoever fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using Government stamp known to have been before used.

COMMENT.—Under this section the fraudulent use of a stamp already used is made punishable.

263. Whoever fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Erase of mark denoting that stamp has been used.

COMMENT.—This section punishes (1) erasure or removal of a mark denoting that a stamp has been used, (2) knowingly possessing any such stamp, and (8) selling or disposing of any such stamp.

**Prohibition of
fictitious stamps.**

263A. (1) Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp, shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

(3) In this section “fictitious stamp” means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 225 to 263, both inclusive, the word “Government,” when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty’s dominions or in any foreign country.

COMMENT.—This section makes it an offence to manufacture fictitious stamps, which are defined to be stamps purporting to be used for purposes of postage whether by the British or any foreign Government. It was enacted for the purpose of stopping the use of fictitious stamps on letters coming from abroad.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**Fraudulent use of false
instrument for weigh-
ing.**

COMMENT.—Intention is an essential part of the offence under this section. This section requires two things: (1) fraudulent use of any instrument for weighing,

and (2) knowledge that it is false. The word 'false' in this and following sections means different from the instrument, weight, or measure, which the offender and the person defrauded have fixed upon, expressly or by implication, with reference to their mutual dealings. Where it was agreed between the seller and the purchaser that a particular measure was to be used in measuring the commodity sold, it was held that, even though the measure was not of the standard requirement, it was not 'false' and there was no fraudulent intent within the meaning of this section.¹

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—Section 264 punishes one who uses a false balance; this section punishes one who uses a false weight or false measure of length or capacity. The accused who sold liquor, measuring it, with a glass which was not the prescribed measure and of which he falsely misrepresented the capacity, was held to have committed an offence not under this section but under s. 415.²

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—This section punishes a person who is in possession of a false weight or measure just as ss. 237, 239 and 240 punish a person who is in possession of a counterfeit coin, and s. 259 punishes a person who is in possession of a counterfeit stamp.

A measure is false if it is something other than what it purports to be. If both the purchaser and seller are aware of the actual measure being used, there is no fraudulent intent as required by this section. It is only when the seller purports to sell according to a certain standard, and sells below that standard, that he can be said to be guilty of fraud.³

The mere possession of false weights or measures will not in itself raise any strong presumption of fraud, as they may have been put away so as not to be used. It is necessary to show that the accused knew the scales to be false and intended to use them fraudulently.⁴ The fraudulent intent will be shown by the place where they are found. Suppose a false balance was found fixed to a tradesman's counter where he was accustomed to sell his goods, and there was no other in the place. There would be, in this case, the strongest possible presumption that the possession was not innocent. On the other hand, suppose he had true balances in his shop, but an untrue one stowed away in an attic with a lot of lumber, there the presumption would be against fraud.

But the mere possession of the false instrument, if such possession cannot be

¹ *Kanayalal*, (1889) 41 Bom. L. R.

² *Kanayalal*, *supra*.

977.

³ *Nurodin*, (1888) Unrep. Cr. C. 886.

⁴ *Hamirmal*, (1890) Unrep. Cr. C.

514.

satisfactorily explained and accounted for, is sufficient ground for presuming an intention to use it fraudulently.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Making, or selling
false weight or
measure.*

COMMENT.—The object of this section is to prevent the circulation of false scales, weights or measures. It punishes a person who makes, sells, or disposes of a false balance, weight or measure.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

THE following specific instances of nuisance are dealt with in this Chapter :—

1. Act likely to spread infection (ss. 260-271).
2. Adulteration of food or drink (ss. 272, 273).
3. Adulteration of drugs (ss. 274-276).
4. Fouling water of a public spring or reservoir (s. 277).
5. Making atmosphere noxious to health (s. 278).
6. Rash driving or riding (s. 279).
7. Rash navigation (ss. 280-282).
8. Exhibition of false light, mark of buoy (s. 281).
9. Danger or obstruction in a public way or line of navigation (s. 283).
10. Negligence in respect of poison (s. 284), fire (s. 285), or explosive substances (s. 286).
11. Negligence in respect of machinery (s. 287), building (s. 288), or animals (s. 289).
12. Selling obscene literature and pictures (ss. 292, 293), or doing obscene acts (s. 294).
13. Keeping a lottery office (s. 294A).

268. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

COMMENT.—Nuisance is of two kinds : (1) public, and (2) private.

(1) Public nuisance or common nuisance is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general, or by neglecting to do anything which the common good requires. It is an act

affecting the public at large, or some considerable portion of them ; and it must interfere with rights which members of the community might otherwise enjoy. It depends in a great measure upon the number of houses and the concourse of people in the vicinity ; and the annoyance or neglect must be of a real and substantial nature. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals, have always been considered public nuisances. A brew-house, glass-house, or swine-yard, may be a public nuisance if it is shown that the trade is such as to render the enjoyment of life and property uncomfortable. Erecting gunpowder mills or keeping gunpowder magazines near a town, keeping large quantities of naphtha near dwelling-houses, blasting stone near a highway, keeping large quantities of materials for making fireworks near a street, working rice-husking machine at night in a residential quarter of a city,¹ and keeping disorderly houses, e.g., disorderly inns, bawdy houses, gaming houses, and committing acts of indecency in public places, have been held to be public nuisances.

It is not a *sine qua non* that the annoyance should injuriously affect every member of the public within its range of operation. It is sufficient that it should affect people in general who dwell in the vicinity.² The annoyance of a few residents of a single house is not sufficient to constitute a public nuisance. It is not sufficient proof under this section to say that the complainant and a few of his tenants represent the people in general who occupy property in the vicinity, there being no other people dwelling within unpleasant range.³

Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million suits. An indictment will fail if the nuisance complained of only affects one of a few individuals.

As to when an individual can bring a civil action in respect of a public nuisance, see the authors' "Law of Torts," Ch. XXI.

(2) Private nuisance is defined to be anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that private nuisance differs from public. It cannot be the subject of an indictment, but may be the ground of a civil action for damages or an injunction, or both.⁴

Ingredients.—This section requires the following essentials :—

1. Doing of any act or illegal omission to do an act.

2. The act or omission.

(i) must cause any common injury, danger, or annoyance—

(a) to the public, or

(b) to the people in general who dwell or occupy property in the vicinity, or

(ii) must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Nuisance not excused on ground of 'convenience.'—It is immaterial whether the act complained of is convenient to a larger number of the public than it inconveniences, but the fact that the act complained of facilitates the lawful exercise

¹ *Phiraya Mal*, (1904) P. R. No. 9 57 Cal. 840.
of 1904.

² *Ibid.*

³ *K. T. Hing v. I. N. Sitas*, (1929)

⁴ *Vide* The Law of Torts, Ch. XXI,
by the authors of this book.

of their rights by part of the public may show that it is not a nuisance to any of the public.¹

No prescriptive right can be acquired.—No prescriptive right can be acquired to maintain, and no length of time can legalise, a public nuisance.² Though twenty years' user may bind the right of an individual, yet the public have a right to demand the suppression of a nuisance, even of a longer standing.³

Liability of master for acts of servants.—The owner of works, carried on for his benefit by his agents, is liable to be indicted for a public nuisance caused by acts of his workmen in carrying on the works, though done by them without his knowledge and contrary to his general orders.⁴

Liability of owner.—Where the use of premises gives rise to a public nuisance it is generally the occupier for the time being who is liable for it, and not the absent proprietor.⁵

Civil and criminal liability.—Nuisances punishable under the Code may be made the subject of a civil action before or without prosecution. A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village may institute a suit in a civil Court for its removal, instead of preferring a complaint to a Magistrate.⁶

Abatement of nuisance.—There is no statutory provision in India justifying a private person or a member of the public in demolishing a building and causing loss to another person by way of abating a nuisance. Complainants re-built their houses which abutted on a public street. A portion of the superstructure was an encroachment on a portion thereof. The accused gathered there for the purpose of abating what they considered to be a public nuisance, and demolished a portion of the superstructure which stood on the encroached portion. The harm caused by the encroachment was not of such a nature and so imminent as to justify the accused to take the law into their own hands and demolish the superstructure. It was held that, as the accused had no right of abating the public nuisance, the demolition of the superstructure by them had no justification in law, the loss caused to the complainants by such demolition was wrongful loss within the meaning of s. 23, and the accused were guilty of the offence of mischief.⁷

CASES.—Obstructing public way.—Persons who placed a bamboo stockade across a tidal navigable river for the purpose of fishing, although they left in such stockade a narrow opening for the passage of boats, which passage was kept closed except on the actual passage of a boat, were held to be guilty of a public nuisance.⁸ A person who appropriated any part of a street by building over it,⁹ or by erecting a platform in front of his house which abutted on it,¹⁰ and a person who filled up a portion of a ditch or drain which formed part of a public way and which belonged to the public,¹¹ were held to have committed this offence. If any portion, however small, of a public street is encroached upon, the inevitable result must be to cause obstruction to persons who may have occasion to use the highway, for the public

¹ Stephen's Dig. of Cr. Law, Art. 197.

² *The Municipal Commissioners of the Suburbs of Calcutta v. Mahomed Ali*, (1871) 7 Beng. L. R. 499.

³ *Weld v. Hornby*, (1806) 7 East 195, 199.

⁴ *Stephens*, (1866) L. R. 1 Q. B. 702.

⁵ *Bibhuti Bhushan v. Bhuban Ram*, (1918) 46 Cal. 515.

⁶ *Jina Ranchhod v. Jodha Ghella*,

(1863) 1 B. H. C. 1.

⁷ *Narasimhulu v. Nagur Sahib*, (1933) 57 Mad. 351.

⁸ *Umesh Chandra Kar*, (1887) 14 Cal. 656.

⁹ *Virappa Chetti*, (1896) 29 Mad. 433.

¹⁰ *Puranmashi*, (1935) 58 All. 604.

¹¹ *Roopnarain Dutt*, (1872) 18 W. R. (Cr.) 38.

is entitled to use every inch of a road that has been dedicated to the public, and the person who does this is guilty of public nuisance.¹ The allowing of a prickly-pear to spread on to a road used by the public is a public nuisance.²

Gambling.—A common gaming-house to which every one who chooses to pay is able to go is necessarily a nuisance and no evidence of any actual annoyance to the public is required in such a case. But a person who admits gamblers into his house, and every person who games therein, is not guilty of this offence in the absence of such evidence.³ Where the lessee of a house permitted disorderly people to use it for gambling and thereby caused annoyance to the public, he was convicted of this offence.⁴

The Calcutta High Court has, however, ruled that gambling is not an offence such as is defined in this section. Where, therefore, certain persons were found to have gambled at a place where the Gambling Act was not in force and convicted under s. 290, it held that the conviction was bad.⁵

Offending sentiments of class is no nuisance.—Where a person cut up meat on his verandah and exposed it to the sight of persons passing along the road, among whom were some Jains, whose temple was close by;⁶ where a person kept a shop open for the sale of meat though the sight of meat was offensive to the sentiment of a section of the public;⁷ and where Mahomedans for a religious purpose killed and cut up two cows before sunrise in a private compound partly visible from a public road,⁸ it was held that no offence was committed. But it would be a public nuisance if a person wilfully slaughtered cattle in a public street so that the groans and blood of the poor beasts were heard and seen by passers-by.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of disease dangerous to life.

COMMENT.—This section is framed in order to prevent people from doing acts which are likely to spread infectious diseases. Welfare of the society is the primary duty of every civilised State.

CASES.—**Syphilis.**—Where a prostitute who was suffering from syphilis encouraged and permitted a man, whom she had assured that she was healthy, to have sexual intercourse with her and thus communicated the disease to him, it was held that she was not guilty under this section as the complainant was himself a responsible person and himself generally an accomplice.⁹ This decision is not sound as the complainant cannot be deemed to be an accomplice, he being unaware of the disease. Communication of syphilis to a person must amount to spreading infection under this section.

¹ *Nisar Muhammad Khan*, (1925) 6 Lah. 203.

² *Molaiappa Gousudan*, (1928) 52 Mad. 79.

³ *Hau Nagji*, (1870) 7 B. H. C. (Cr. C.) 74; *Dustoor Khan*, (1867) 1 P. R. No. 16 of 1867.

⁴ *Thandavarayudu*, (1891) 14 Mad. 304.

⁵ *Sasi Kumar Bose*, (1908) 7 C.

W. N. 710.

⁶ *Byramji Edalji*, (1887) 12 Bom. 437.

⁷ *Hasan Samad*, (1897) Unrep. Cr. C. 903; *Eesa v. Keemoo*, (1867) P. R. No. 18 of 1867; *Assa Nand v. Hoosain Buksh*, (1868) P. R. No. 15 of 1868.

⁸ *Zakiuddin*, (1887) 10 All. 44; *Sheikh Amjad*, (1942) 21 Pat. 315.

⁹ *Rakma*, (1886) 11 Bom. 59.

Small-pox.—Where a mother refused to allow her daughter suffering from small-pox to be removed to a hospital in accordance with an order made by a District Magistrate unless she accompanied her, it was held that she had committed no unlawful or negligent act within the meaning of this section.¹

Cholera.—Where K, knowing he was suffering from cholera, travelled by a train, without informing the railway officers of his condition, and M, knowing K's condition, purchased his ticket and travelled with him, it was held that K was guilty under this section, because he must have known that he was doing an act likely to spread infection, and that M was guilty of abetment of K's offence.²

Plague.—The accused resided in a plague-stricken house and was in contact with a plague patient. He was taken to the plague-shed in company with the patient, who died there. The next day he left the shed against orders and travelled by rail to a neighbouring town and from thence to another village. It was held that he was guilty of an offence under this section as he had sufficient reason to believe that his act was dangerous, and likely to spread infection of a disease dangerous to life.³

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Malignant act likely to spread infection of disease dangerous to life.

COMMENT.—The offence under this section is an aggravated form of the offence punishable under the preceding section.

In this section the use of the word 'malignantly' indicates that the person spreading infection should be actuated by malice. The word denotes a deliberate intention on the part of the accused.

"If any person died of the plague and his death could be traced to infection so caused maliciously, the person who caused it, . . . would be chargeable with homicide. . . . It is contrary to the principle of the Code to punish acts which the doer when he committed them knew to be likely to cause certain evil results, if in fact such results were not produced, in the same manner as if such evil consequences had actually flowed from them."⁴

271. Whoever knowingly disobeys any rule made and promulgated by the Central or any Provincial Government or the Crown Representative for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Disobedience to quarantine rule.

¹ *Cahoon v. Mathews*, (1897) 24 Cal. 494.

² *Krishnappa*, (1888) 7 Mad. 276.

³ *Niadar Mal*, (1902) P. R. No. 22 of 1902.

⁴ 2nd Rep., s. 226.

COMMENT.—The motive for disobeying any rule is quite immaterial. The disobedience is punishable whether any injurious consequence flows from it or not.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The mixing of noxious ingredients in food or drink, or otherwise rendering it unwholesome by adulteration, is punishable under this section. Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it, e.g., mixing water with milk¹ or *ghee* (clarified butter) with vegetable oil.²

'Adulteration' means mixing with any other substance whether wholly different, or of the same kind but of inferior quality.

The expression 'noxious as food' means unwholesome as food or injurious to health and not repugnant to one's feelings. A person who mixes pig's fat with *ghee*, intending to sell the mixture as food or knowing it to be likely that it will be sold as such cannot be convicted for so doing.³

It is essential to show that an article of food or drink has been adulterated and that it was intended to sell such article, or that it was known that it would be likely to be sold as food or drink.⁴

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The preceding section punished adulteration of food or drink; this section penalises the sale of adulterated articles. e.g., selling toddy in which germs are germinated.⁵ It is not an offence to sell inferior food cheap if it is not noxious.

Ingredients.—This section requires three things—

- (1) Selling or offering for sale as food or drink some article.
- (2) Such article must have become noxious or must be in a state unfit for food or drink.
- (3) The sale or exposure must have been made with a knowledge or reasonable belief that the article is noxious as food or drink.

What is punishable under this section is the sale of noxious articles as food or drink and not the mere sale of noxious article. Where the owner of a grain pit

¹ *Chinniah*, (1897) 1 Weir 228.

⁴ *Sulman Shamji*, (1943) 45 Bom.

² *Chokraj Marwari*, (1908) 12 C. L. R. 895.

W. N. 608.

³ *Ram Dayal*, (1928) 46 All. 94.

⁵ *Ediga Narasappa*, (1894) 1 Weir 228.

sold the contents of it before it was opened at a certain sum per maund whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under this section.¹ Similarly, the selling of wheat containing a large admixture of extraneous matter, such as dirt, wood, matches, charcoal, etc., was held to constitute no offence.²

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—To preserve the purity of drugs for medical purposes this section is enacted. It is sufficient if the efficacy of a drug is lessened, it need not necessarily become noxious to life.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The offence under this section consists in selling, or offering, or exposing for sale, or issuing from any dispensary, an adulterated drug as unadulterated. This section bears the same relation to s. 274 as s. 273 does to s. 272. Section 273 deals with the sale of an article of food or drink that has become noxious. This section not only prohibits the sale of an adulterated drug but also its issue from any dispensary.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹ *Salig Ram*, (1906) 28 All. 812.

² *Narumal*, (1904) 6 Bom. L. R.

520; *Gunesha*, (1873) P. R. No. 15 of 1873.

COMMENT.—The offence constituted by this section does not involve the idea of any adulteration or inferiority, in the substituted medicine. It is sufficient that it is not in fact what it purports to be; for instance, supplying savin instead of saffron.¹

This section is connected with s. 275 in the same way as s. 274 is connected with s. 273.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling water of public spring or reservoir.

COMMENT.—The water of a public spring or reservoir belongs to every member of the public in common, and if a person voluntarily fouls it he commits a public nuisance.

Ingredients.—The section requires—

- (1) voluntary corruption or fouling of water;
- (2) the water must be of a public spring or reservoir; and
- (3) the water must be rendered less fit for the purpose for which it is ordinarily used.

The words 'corrupts or fouls' mean some act which physically defiles or fouls the water. Thus the act of a woman of a lower caste taking water from a public cistern does not amount to corrupting or fouling.² But bathing in a tank fouls the drinking water.³

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

279†. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent¹ as to endanger human life,² or to be likely to cause hurt or injury

Rash driving or riding on a public way.

¹ *White v. Bywater*, (1887) 19 Q. B. D. 582.

² *Bhagi*, (1900) 2 Bom. L. R. 1078.

³ *Muthian*, (1807) 1 Weir 209.

† In Burma the following s. 279A is added by Burma Act VI of 1941, s. 1—
279A. Whoever throws or causes to fall or strike at, against, into or upon any vehicle in a public place, any wood, stone, acid or other matter or thing, with intent or knowledge that he is likely to endanger the safety of any person being in or upon such vehicle, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine

which may extend to rupees five hundred, or with both.

Explanation (1).—For the purpose of this section, "vehicle" means a wheeled conveyance capable of being used in a street.

Explanation (2).—It is not an offence punishable under this section to throw water at any vehicle in a public place during the Thingyan Festival.

Explanation (3).—Nothing contained in this section shall be deemed to prevent any person from being prosecuted under any other section of this Code or under any other law, for any act or omission.

to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

Ingredients.—The section requires two things—

1. Driving of a vehicle or riding on a public way.
2. Such driving or riding must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

1. 'Rash or negligent.'—A rash act is primarily an over-hasty act and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and caution.

'Negligence' has been defined to be the breach of a duty caused by the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.¹

'Negligence' is not an affirmative word; it is a negative word; it is the absence of such care, skill and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed.²

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness.

Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.³

There are several offences in the Code in which the element of criminal rashness or negligence occurs, viz.,—ss. 279, 280, 283-289, 304A, 336, 337, 338.

2. 'Endanger human life.'—It is not necessary that the rash or negligent act should result in injury to life or property.⁴ Under ss. 279, 280, 282, and 284-289 offences against public safety are completed although the rash or negligent act results in no injury to life or property. It is not necessary to show that a person was on the road at the time, and the Court may take into consideration the probability of persons using it being placed in danger.⁵ When a person is driving on the wrong side of the road at the time of a collision, he must satisfy the Court that he was not rash or negligent in driving on that side.⁶

Abetment.—When a person in charge of a motor vehicle places it under the control of another then with the actual knowledge that such person has no licence to drive and constructive knowledge that he was not trained to drive any motor vehicle is guilty of abetment of the offence of rash and negligent driving if such offence is com-

¹ *Blyth v. Birmingham Waterworks Co.*, (1856) 11 Ex. 781, 784.

² *Grill v. General Iron Screw Collier Co.*, (1886) 35 L. J. C. P. 321, 330.

³ *Nidamarti Nagabhushanam*, (1872) 7 M. H. C. 119; *Ketabdi Mundul*,

(1879) 4 Cal. 764.

⁴ (1871) 6 M. H. C. (Appx.) xxiii.

⁵ *Hormusji Neweroji Lord*, (1894)

19 Bom. 715.

⁶ *Babu*, (1920) 23 Bom. L. R. 358.

mitted by the person driving the vehicle which the person in charge of the vehicle, sitting by his side, could have prevented by the accident.¹

Difference between civil and criminal liability.—There can be no civil action for negligence if the negligent act or omission has not been attended by an injury to any person; but bare negligence involving the risk of injury is punishable criminally, though nobody is actually hurt by it.

If actual hurt is caused the case would come under s. 337 or 338, and if death is caused, under s. 302 or 304A.

In a case of collision or injury arising out of rash driving, the actual driver and not the owner of the carriage is liable under this section;² whereas, in a civil suit, the injured party has an option to sue any of them. In a criminal case every man is responsible for his own act; there must be some personal act.³

Contributory negligence.—The doctrine of contributory negligence does not apply to criminal actions.⁴ The accused will be liable even though there has been a degree of negligence on the part of the prosecutor which would incapacitate him from bringing a civil suit.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The last section deals with public ways on land; this section deals with waterways. It deals with the case of inland navigation. Rash or negligent navigation on the high seas is not punished under the Code but under certain special statutes.

281. Whoever exhibits any false light, mark or buoy intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.—Intentional exhibition of a false light, mark or buoy, with a view to mislead any navigator, is punishable under this section.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹ *Provincial Government, Central Provinces and Berar v. Saidu*, [1947] Nag. 144.

² *Mr. A. W. Larrymore v. Pernent*, I. P. C.—14

do *Deo Rai*, (1870) 14 W. R. 32.

³ *Allen*, (1885) 7 C. & P. 153.

⁴ *Kew*, (1872) 12 Cox 355; *Blenkinsop v. Ogden*, [1898] 1 Q. B. 783.

COMMENT.—This section provides against the negligence of common carriers by water. Where a person, with the assistance of two others, plied a ferry-boat which was out of order and had a crack, and he took in one hundred passengers, and as a consequence the boat was upset, and seven persons were drowned, it was held that the accused had committed an offence under this section.¹ Certain persons whom the accused, a ferry-man, was rowing across a river were drowned by the sinking of the boat which was an old one with some holes in the bottom over which planks had been nailed. It was held that the accused was guilty under this section.² Where the lessee of a public ferry knew that boats were usually overloaded but took no steps against it and allowed his boatmen to overload them as they liked and in consequence a boat sank with some passengers, it was held that the lessee was guilty of criminal negligence and liable under this section.³

There is no provision in the Code for the negligence of a common carrier by land.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way¹ or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Danger or obstruction in public way or line of navigation.

COMMENT.—This section refers to parties who do acts so as to cause danger, obstruction or injury to any person in a public line of navigation. The offence punishable under this section is the nuisance of causing obstruction, etc., in a public way or navigable river or canal.

Ingredients.—The section requires two things.—

1. A person must do an act or omit to take order with any property in his possession or under his charge.

2. Such act or omission must cause danger, obstruction or injury to any person in any public way or line of navigation.

It is not necessary to prove that any specific individual was actually obstructed. Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot passengers from passing without inconvenience, it was held that this offence was committed.⁴

1. ‘Public way.’—Where the privilege of a way is enjoyed only by a particular section of the community or by the inhabitants of two or three villages and not by others, the way is not a public way within the meaning of the section.⁵

CASES.—Where a person having a house in a street exhibited effigies at his windows, and thereby attracted a crowd to look at them, which caused the footway to be obstructed, so that the public could not pass as they ought to do, it was held that he was guilty of nuisance.⁶ The accused in the night time altered the position of two arms of a semaphore signal on a railway station, so as to change the signal from “all clear” to “danger” and “caution” respectively, and also altered the colour of two distant signals on the line from white to red, thereby changing the signal from “clear” to “danger.” The alteration caused a train, which would have passed the station without slackening speed, to slacken speed, and to come nearly to a stand. Another train going in the same direction and on the same rails, was

¹ *Khoda Jagta*, (1864) 1 B. H. C. Cal. 253.
(Cr. C.) 137.

² *Magness Behara*, (1869) 11 W. R. (Cr.) 3.

³ *Tofel Ahmad Miya*, (1933) 61

⁴ *Venkappa*, (1918) 38 Mad. 305.

⁵ *Prannath Kundu*, (1929) 57 Cal.

526.

⁶ *Carlisle*, (1834) 6 C. & P. 636.

due at the station in half an hour. It was held that the accused had obstructed a train.¹

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with respect to poisonous substance.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both.

COMMENT.—Under this section a person in possession of a poisonous substance should have negligently omitted to take such order with it as is sufficient to guard against any probable danger to human life from such substance. It is not necessary that the negligent omission should be followed by any disastrous consequences.²

285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to fire or combustible matter.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—This section extends the provisions of the preceding section to fire or any other combustible matter.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to explosive substance.

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The foregoing section deals with 'fire or combustible matter,'

¹ *Haufield*, (1870) L. R. 1 C. C. R. 253.

² *Hosain Beg*, (1882) P. R. No. 16 of 1882.

this with 'explosive substance'; otherwise the provisions of both the sections are alike.

The word 'knowingly' is evidently used in this section advisedly. The accused, having returned to his house after dawn from watching his crops at night with a loaded gun and finding his house-door locked, placed the gun, loaded, with the hammer down on the cap, on a cot outside his house, and went for a short time to a neighbouring house. In his absence the child of a neighbour came to the cot and began playing with the gun, which went off and killed the child; it was held that he could not be convicted under this section as it could not be said that he must have known or ought to have considered it to be probable that a child or children would be likely to be playing about in that place, and that it or they would be likely to handle or play with the gun, and that the danger which actually occurred had not been such a probable danger as that he could be held responsible.¹

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

Negligent conduct
with respect to machinery.

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—Machinery is dangerous to human life if proper precaution is not taken in its working. This section renders any rash or negligent conduct in respect of machinery punishable. Section 284 deals with poison; s. 285, with fire or combustible matter; s. 286, with explosive substance; and this section, with machinery.

An owner of machinery is criminally liable if he compels his servants to work it in an unsafe condition knowing it to be so, in a manner likely to endanger human life. The fact that he has employed a competent man to look after the machinery is not a sufficient answer to the charge. If he employs a competent man to work it and leaves him unfettered, he cannot be held criminally responsible for any accident due to the errors of his employee.²

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—This section deals with negligent conduct with respect to pulling down or repairing buildings.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession¹

Negligent conduct
with respect to animal.

¹ *Chenchugadu*, (1885) 8 Mad. 421, 424.

² *Kanhaya Lal*, (1906) P. R. No. 8 of 1906.

as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal,¹ shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—This section deals with improper or careless management of animals. It does not refer to savage animals alone, but to any 'animal,' wild or domestic, e.g., a pony.¹

In the case of wild and savage animals, a savage or mischievous temper is presumed to be known to their owner and to all men as a usual accompaniment of such animals; and hence a positive duty is cast on the owner to protect the public against the mischief resulting from such animals being at large. Any one who keeps such a wild animal as a tiger or bear, which escapes and does damage, is liable without any proof of notice of the animal's ferocity; in such a case it may be said '*res ipsa loquitur*.'

In the case of animals which are tame and mild in their general temper no mischievous disposition is presumed. It must be shown that the defendant knew that the animal was accustomed to do mischief. Some evidence must be given of the existence of an abnormally vicious disposition. A single instance of ferocity, even a knowledge that it has evinced a savage disposition, is held to be sufficient notice.²

1. 'Animal in his possession.'—The accused must have the possession of the animal which he is bound to keep in control. A bull was let loose by the father of the accused some years ago; on its becoming vicious it was ordered to be shot. The accused having claimed its ownership was convicted of this offence. It was held that it could not be said that the animal was in the possession of the accused and therefore the conviction was illegal.³ A Hindu set at large, in accordance with his religious usage, a young bull, which a considerable time afterwards became dangerous. He was prosecuted and convicted under this section. It was held that, as the bull was not then in his possession and was not dangerous when set at large, the conviction was bad.⁴

2. 'As is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal.'—Where a pony which was tied negligently got loose, and ran through a crowded bazar, it was held that the conviction under this section was good, because the pony on such an occasion might create danger to the lives or limbs of men, women and children, walking in the bazar.⁵ The accused, a horse-keeper, harnessed his master's horse, put him into his carriage, and then went away, leaving the horse and carriage standing in the road of the compound of his master's house without any justification; it was held that the accused had committed an offence under this section, since the horse was not the less in the actual possession of the servant, because it was for some purpose in the constructive possession of his master.⁶

¹ *Chand Manal*, (1872) 19 W. R. (Cr.) 1.

² See the authors' "Law of Torts," 14th Edn., c. xx, p. 330.

³ *Fatta*, (1880) P. R. No. 32 of 1889.

⁴ *Shambu Dial*, (1904) P. R. No. 5 of 1904.

⁵ *Chand Manal*, sup.

⁶ *Natha Reva*, (1881) Unrep. Cr. C. 163.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Punishment for public nuisance in cases not otherwise provided for.

COMMENT.—This section provides for the punishment of a nuisance falling within the four corners of the definition given in s. 268 but not punishable under any other section.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Continuance of nuisance after injunction to discontinue.

COMMENT.—This section punishes a person continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. Sections 142 and 143 of the Code of Criminal Procedure empower a Magistrate to forbid an act causing public nuisance.

292. Whoever—

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

Sale, etc., of obscene books, etc.

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

COMMENT.—This section and s. 293 were inserted by the Obscene Publications Act (VIII of 1925) for the purpose of giving effect to the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, signed at Geneva on behalf of the Governor General in Council on September 12, 1923.

This section gives effect to Article I of the International Convention.

1. 'Obscene.'—The test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.¹ If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress.² The motive in publishing a book does not prevent it from being obscene, if the descriptions are in themselves obscene.³ A passage may not be obscene in its place in a religious book but may become so by being published in a journal sold to the general public.⁴

Exception.—Under the Exception, religious sculptures, paintings, and engravings are excepted. Works of art are never considered obscene. A picture of a woman in the nude is not *per se* obscene. When there is nothing in it to offend the ordinary decent person, it is impossible to say that it is obscene within the meaning of this section.⁵

293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—This section provides for enhanced sentence where the obscene objects are sold, etc., to persons under the age of twenty years.

Obscene acts and songs. **294.** Whoever, to the annoyance of others,

(a) does any obscene act in any public place, or
(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,
shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

¹ Per Cockburn, C. J., in *Hicklin*, (1868) L. R. 3 Q. B. 360, 371; *Thakar Dutt and Devi Chand*, (1917) P. R. No. 25 of 1917; *Ghulam Hussain*, (1916) P. R. No. 5 of 1917; *Sree Ram Saksena*, [1940] 1 Cal. 581.

² *Hari Singh*, (1905) 28 All. 100.
³ *Kailashchandra Acharjya*, (1932) 60 Cal. 201.

⁴ *Ghulam Hussain*, *sup.*
⁵ *Sree Ram Saksena*, *sup.*

COMMENT.—The obscene act or song must cause annoyance. As to the meaning of 'public place,' see, s. 159.

294A. Whoever keeps any office or place for the purpose of drawing any lottery¹ not being a State lottery or a lottery authorised by the Provincial Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes² any proposal to pay any sum, or to deliver any goods,³ or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which may extend to one thousand rupees.

COMMENT.—Lottery stands on the same footing as gambling because both of them are games of chance. The section does not touch authorized lotteries, but intends to save people from the effects of those not authorized by prohibiting (1) the keeping of offices or places for drawing them, and (2) the publication of any advertisement relating to them.

Ingredients.—This section requires two things—

1. Keeping of any office or place for the purpose of drawing any lottery.
2. Such lottery must not be authorized by Government.

1. 'Drawing any lottery.'—A lottery is a distribution of prizes by lot or chance without the use of any skill.¹ It makes no difference that the distribution is part of a genuine mercantile transaction.² A scheme may amount to a lottery though none of the competitors is a loser.³

The word 'drawing' is used in its physical sense; the actual drawing of lots is an essential ingredient of the offence.⁴ The word must be given its natural meaning. It does not mean conducting.⁵

2. 'Publishes.'—This word includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement.⁶ The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was held to be guilty under this section.⁷ The intention of the Legislature appears to have been, not only that chances, etc., in the lottery should not be sold, but also that the public should not be informed where such chances, etc., could be purchased. And they enacted that no person should publish these proposals to the world, that the poor and ignorant sort of people might not know where these transactions were going on.⁸ The applicant published a circular notifying different prizes on horses winning at the Derby races and on starters, and also other special prizes; it was held that the applicant was guilty of the offence charged, since he had published a proposal to pay a sum for the benefit

¹ *Sesha Ayyar v. Krishna Ayyar*, (1935) 59 Mad. 562, 566, F.B.; *Taylor v. Smetten*, (1883) 11 Q. B. D. 207; *Mukandi Lal*, (1917) P. R. No. 85 of 1917.

² *G. C. Chakrabatty*, (1915) 9 B. L. T. 124.

³ *Harris*, (1866) 10 Cox 352.

⁴ *Vazirally*, (1928) 30 Bom. L. R. 1426, 53 Bom. 57.

⁵ *Public Prosecutor v. Kalkura*, [1942] Mad. 802.

⁶ *Mancherji Kavaji*, (1885) 10 Bom.

97.

⁷ *Ibid.*

⁸ *Smith*, (1791) 4 T. R. 414, 419.

of a person on an event or contingency relative or applicable to the drawing of a ticket in a lottery; and it did not matter that the payment proposed to be made was not made by the person advertising.¹

8. 'Goods.'—The term 'goods' includes both movable and immovable property. The publication of an advertisement of a lottery by which the lucky winner would get a factory for less than its real value is an offence under this section.²

CASES.—Agreement for contributions to be paid by lot is not lottery.—An agreement whereby a number of persons subscribe, each a certain sum, by a periodical instalment, with the object that each in his turn, (to be decided by lot), shall take the whole subscription for each instalment, all such persons being returned the amount of their contributions, the common fund being lent to each subscriber in turn, was held to be not illegal.³

Prize chit.—A prize chit was started with the object of creating a fund for a temple. It consisted of 625 subscribers, the monthly subscription being Rs. 3. The subscription was to be paid for fifty months. A drawing was to take place every month, one ticket was to be drawn out of 625 tickets and the subscriber who drew the ticket was to be paid Rs. 150 without any liability to pay future instalments. That process was to be repeated every month till the fiftieth month. After the fiftieth month the remaining 575 subscribers were to be each paid in a particular order Rs. 150, and the chit fund was to be closed. It was held that the chit fund was a lottery.⁴

Transaction in which prizes are decided by chance amount to lottery.—The appellant erected a tent, in which he sold packets, each containing a pound of tea, at 2s. 6d. a packet. In each packet was a coupon entitling the purchaser to a prize, and this was publicly stated by the appellant before the sale, but the purchasers did not know, until after the sale, what prizes, they were entitled to and the prizes varied in character and value. The tea was good and worth the money paid for it. It was held that the act of the appellant did constitute a lottery.⁵ The proprietor of a paper conducted competitions in the following manner. A sentence was inserted in the paper with one word missing; intending competitors were required to cut out a coupon attached to the paper, to write the missing word on the coupon and send it, together with a fee of 1s. for each coupon, to the proprietor. The missing word was decided upon before the commencement of the competition. The entrance fees were divided among the successful competitors. It was held that the competition constituted a lottery.⁶ The accused got ten notes of rupees five to be put in by manufacturers in different packets of cigarette, and mixed those packets with other packets which contained no notes. He then published handbills advertising the prize of Rs. 5 which could be automatically obtained by purchasers of the cigarettes which were sold at the same rate as before. It was held that the accused was guilty under the second part of the section.⁷ The accused invited the public to subscribe a large sum for an association whose object was said to be for the relief of people in debt or distress. There was no provision for the return of the capital sum, but one-sixth of the interest derived therefrom was to be

¹ *Chimanlal*, (1925) 27 Bom. L. R. 363.

² *Malla Reddi*, (1926) 50 Mad. 479.

³ *Vasudevan Nambudri v. Mamud*, (1898) 22 Mad. 212.

⁴ *Sesna Ayyar v. Krishna Ayyar*, (1935) 39 Mad. 562, F.B.

⁵ *Taylor v. Smetten*, (1888) 11 Q. B. D. 207.

⁶ *Barclay v. Pearson*, [1893] 2 Ch 154.

⁷ *Vazirally*, (1928) 30 Bom. L. R. 1426, 53 Bom. 57.

used for the objects of the association, whilst the remainder became divisible every three months among the subscribers as cash bonuses of various amounts. These bonuses were to be distributed by lot. It was held that the transaction was a lottery within the meaning of this section.¹

Transaction requiring skill for winning prizes is not lottery.—The accused published a newspaper containing an advertisement of "coupon competition," which was to be carried out by means of coupons, to be filled up by the purchasers of the paper with the name of the horses selected by the purchasers as likely to come in first, second, third and fourth, in a race. For every coupon filled up after the first the purchaser paid a penny, and the accused promised a prize of £ 100 for naming the first four horses correctly. It was held that the transaction did not amount to a lottery, because the filling up of the names of horses required skill and certain amount of special knowledge.² The accused published a newspaper containing an offer of a money prize for a correct prediction of the number of births and deaths in London during a named week. Competitors, who were not limited to one prediction, were to fill in the predicted numbers on coupons which were published in the issue of the paper which contained the offer. It was held that the competition not being one, the result of which depended entirely on chance, was not a lottery.³

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

THE principle on which this Chapter has been framed is a principle on which it would be desirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.⁴

295. Whoever destroys, damages, or defiles¹ any place of worship, or any object² held sacred by any class³ of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Injuring or defiling place of worship, with intent to insult the religion of any class.

COMMENT.—The object of this section is to punish those persons who intentionally wound the religious feelings of others by injuring or defiling a place of worship.

Ingredients.—This section requires two things.—

1. Destruction, damage or defilement of (a) any place of worship, or (b) any object held sacred by a class of persons.

¹ *A. D. Raj*, (1932) 10 Ran. 232.

² *Hall v. Cox*, [1899] 1 Q. B. 198.

³ *Stoddart v. Sagar*, [1895] 2 Q. B.

⁴ Note J. p. 136.

2. Such destruction, etc., must have been done (i) with the intention of insulting the religion of a class of persons, or (ii) with the knowledge that a class of persons is likely to consider such destruction, etc., as an insult to their religion.

1. 'Defiles.'—This word is not to be restricted in meaning to acts that would make an object of worship unclean as a material object, but extends to acts done in relation to the object of worship which would render such object ritually impure.¹ It is not confined to the idea of 'making dirty,' but extends to ceremonial pollution. The presence of a Sudra in such portions of a Hindu temple as are open to non-Brahmins is not a 'defilement' within the meaning of this section.²

2. 'Object.'—"There is a distinction, not arbitrary, between objects which are objects of respect and even veneration and objects which are held sacred; as an example of the former, I may refer to a place of sepulture (not actually consecrated, as in the case of ground specially consecrated for that purpose according to the rites of Christian churches), as distinguished from a place for worship to the deity or where the idol or altar is kept; and such distinction appears to have been kept in view by the Legislature, for while s. 295 deals with the latter class of objects and places, s. 297 deals more especially with trespasses on places of sepulture and places set apart for the performance of funeral rites and as depositories for the remains of the dead."³

The word 'object' does not include animate objects. It refers only to inanimate objects such as churches, mosques, temples, and marble or stone figures representing gods.⁴ Killing of a cow by a Mahomedan, within the sight a public road frequented by Hindus, is not punishable under this section.⁵ Similarly, where a bull dedicated and set at large on a ceremonial occasion of a Hindu in accordance with a religious usage was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans, it was held that no offence was committed.⁶

Case.—The damaging or destroying of a sacred thread worn by a person, who is not entitled under the Hindu custom to wear it or for whom the wearing of the sacred thread was not part of his ceremonial observance under the Hindu religion, in assertion of a mere claim to higher rank was held to be not an insult to his religion.⁷

295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—This section was introduced by the Criminal Law Amendment Act (XXV of 1927) owing to the agitation following the decision of the Lahore High Court in the *Rangila Rasul* case⁸ in which it was held that s. 153A was not

¹ *Sivakoti Swami*, (1885) 1 Weir 253.

² *Kuttichami Moothan v. Rama Puttar*, (1918) 41 Mad. 980.

³ Per Brandt, J., in *Ratna Mudali*, (1886) 10 Mad. 126, 127, 128.

⁴ *Imam Ali*, (1887) 10 All. 150, F.B.; *Ramesh Chunder Sannyal v. Hiru*

Mondal, (1890) 17 Cal. 852.

⁵ *Imam Ali*, sup.; *Ali Muhammad*, (1917) P. R. No. 10 of 1918, F.B.

⁶ *Ramesh Chunder Sannyal v. Hiru Mondal*, sup.

⁷ *Sheo Shankar*, (1940) 15 Luck. 690.

⁸ *Raj Pal*, (1927) 28 P. L. R. 514.

meant to stop polemics against a deceased religious leader however scurrilous and in bad taste such attacks might be. Though this view was overruled in the *Risala-i-Vartman* case,¹ which laid down that a scurrilous, vituperative, and foul attack on a religion or on its founder would come within the purview of s. 158A, yet the Legislature thought it necessary to enact a special provision dealing with such an offence.

Object.—The Statement of Objects and Reasons stated: "The prevalence of malicious writings intended to insult the religion or outrage the religious feelings of various classes of His Majesty's subjects has made it necessary to examine the existing provisions of the law with a view to seeing whether they require to be strengthened. Chapter XV of the Indian Penal Code, which deals with offences relating to religion, provides no penalty in respect of writings of the kind described above. Such writings can usually be dealt with under s. 158A of the Indian Penal Code as it is seldom that they do not represent an attempt to promote feelings of enmity or hatred between different classes. It must be recognized, however, that this is only an indirect way of dealing with acts which may properly be made punishable themselves, apart from the question whether they have the further effect of promoting feelings of enmity or hatred between classes. Accordingly it is proposed to insert a new section in Chapter XV of the Indian Penal Code, with the object of making it a specific offence intentionally to insult or attempt to insult the religion or outrage or attempt to outrage the religious feelings of any class of His Majesty's subjects."²

The Select Committee in their report observed that the essence of the offence is "that the insult to religion or the outrage to religious feelings must be the sole, or primary, or at least the deliberate and conscious intention. We have accordingly decided to adopt the phraseology of section 298 which requires deliberate intention in order to constitute the offence with which it deals."³

This section has no retrospective effect, but if a new edition of a book, which was published before the enactment of that section, is published after its enactment the author of the book can be convicted under it if his connection with the publisher is established.⁴

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—Assemblies held for religious worship, or for the performance of religious ceremonies, are hereby protected from intentional disturbance.

The object of this section is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively; and not when they engage in worship in an unquiet place, open to all the public as a thoroughfare.⁵

Ingredients.—To constitute an offence under this section—

(1) There must be a voluntary disturbance caused.

¹ *Devi Sharan Sharma*, (1927) 28 17, 1927, Part V, p. 251.
P. L. R. 407.

² *Gazette of India*, dated August 074.

27, 1927, Part V, p. 213.

³ *Gazette of India*, dated September

⁴ *Shib Sharma*, (1941) 16 Luck.

⁵ *Vijayaraghava Chariar*, (1908) 26

Mad. 554, 574, P.B.

(2) The disturbance must be caused to an assembly engaged in religious worship or religious ceremonies.

(3) The assembly must be lawfully engaged in such worship or ceremonies, i.e., it must be doing what it has a right to do.

CASES.—Disturbance caused by saying 'amin.'—A mosque is a place where all sects of Mahomedans are entitled to go and perform their devotion as of right, according to their conscience; and a Mahomedan of one sect pronouncing the word "amin" loudly, in the honest exercise of conscience, commits no offence or civil wrong,¹ though he may by such conduct cause annoyance in the mosque to other worshippers of another sect who do not pronounce that word loudly.² But any person, Mahomedan or not, who goes into a mosque not *bona fide* for a religious purpose, but *mala fide*, for the purpose of disturbing others engaged in their devotions, will render himself criminally liable.³

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship¹ or on any place of sepulture, or any place set apart for the performance of funeral rites² or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine,³ or with both.

COMMENT.—This section deals more especially with trespasses on places of sepulture and places set apart for the performance of funeral rites and as depositories for the remains of the dead. It extends the principle laid down in s. 295 to places which are treated as sacred. The essence of the section is an intention, or knowledge of likelihood, to wound feelings or insult religion and when with that intention or knowledge trespass on a place of sepulture, indignity to a corpse, or disturbance to persons assembled for funeral ceremonies, is committed, the offence is complete.⁴

1. 'Trespass in any place of worship.'—'Trespass' here implies not only criminal trespass but also an ordinary act of trespass, i.e., an entry on another's land without lawful authority with the intention specified in s. 441.⁵ The term 'trespass' means any violent or injurious act, committed in such place and with such knowledge or intention as is defined in s. 297.⁶

The trespass must be in a place of worship with the knowledge that the feelings of persons would be wounded thereby. Where a low caste man entered into a

¹ *Ata-ullah v. Azim-ullah*, (1889) 12 All. 494, F.B.

² *Jangu v. Ahmadullah*, (1889) 13 All. 419, F.B.

³ *Ibid.*

⁴ *Burhan Shah*, (1887) P. R. No. 26 of 1887.

⁵ *Subhan*, (1896) 18 All. 395; *Jhulam Sain*, (1918) 40 Cal. 548; *Ratna Mudaki*, (1886) 10 Mad. 126; *Umar Din*, (1915) P. R. No. 23 of 1915 (*Shah Din J.*, contra *Le-Rossignol J.*)

⁶ *Mustan*, (1922) 1 Ran. 600; *Sanees*, [1941] Kar. 316.

temple,¹ and where a person had sexual connection inside a mosque,² it was held that they were guilty of an offence under this section.

2. 'Funeral rites.'—The section contemplates disturbance of persons engaged in performing funeral ceremonies. But a *moharram* procession is not a funeral ceremony within the meaning of this section.³ Obstruction to the performance of obsequies comes under this section.⁴

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, etc.,
with deliberate intent
to wound religious
feelings.

COMMENT.—The authors of the Code observe: "In framing this clause we had two objects in view: we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gesture or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause."⁵

CASES.—Interpolation of forbidden chant.—Interpolation of a forbidden chant in an authorised ritual is an offence under this section.⁶

Exhibiting cow's flesh.—Exhibiting cow's flesh by carrying it in an uncovered state round a village with the deliberate intention of wounding the religious feelings of Hindus was held to be an offence under this section.⁷

Killing of cow.—Where on the occasion of Bakr-i-id, the accused killed a cow at dawn in a semi-private place and the killing was seen by some Hindus walking along the village pathway fifty feet away, it was held that no offence under this section was committed.⁸

Wilful pollution of food served at caste dinner.—Where certain Hindus present at a caste dinner had sat down to partake of the food which had been served to them, when certain other members of the caste came, and after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated, and who, in consequence, left the food untouched, it was held that the persons who threw the shoe could not be convicted under this section.⁹ This decision does not lay down sound law. The framers of the draft Code were of opinion that the rendering the food of a Hindu useless to him by causing it to be in what he considered as a polluted state was an injury necessitating punishment.¹⁰

¹ *Bhagya*, (1880) Unrep. Cr. C. 148.

² *Maqad Husain*, (1923) 45 All. 529.

³ *Ghosia v. Kalka*, (1885) 5 A. W. N. 49.

⁴ *Subramania v. Venkata*, (1883) 8 Mad. 254, 257.

⁵ Note J., p. 137.

⁶ *Narasimha v. Shree Krishna*, (1892)

2 Mad. Jur. 236.

⁷ *Rahman*, (1893) 13 A. W. N. 144.

⁸ *Sheikh Amjad*, (1942) 21 Pat. 315.

⁹ *Moti Lal*, (1901) 24 All. 155.

¹⁰ Note J., p. 137.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

1. Unlawful homicide.
 - (a) Culpable homicide (s. 299).
 - (b) Murder (s. 300).
 - (c) Homicide by rash or negligent act (s. 304A).
 - (d) Suicide (s. 319).
 - (e) Being a Thug (s. 310).
2. Causing miscarriage (s. 317).
3. Exposure of infants and concealment of births of children (ss. 317, 318).
4. Hurt.
 - (i) Simple (s. 319).
 - (ii) Grievous (s. 320).
5. Wrongful restraint and wrongful confinement (ss. 339, 340).
6. Criminal force (s. 350).
7. Assault (s. 351).
8. Kidnapping (ss. 359, 360, 361).
9. Abduction (s. 362).
10. Slavery (s. 370).
11. Selling or buying a minor for prostitution (ss. 372, 373).
12. Unlawful compulsory labour (s. 374).
13. Rape (s. 375).
14. Unnatural offence (s. 377).

Of Offences affecting Life.

299. Whoever causes death¹ by doing an act with the intention of causing death,² or with the intention of causing such bodily injury as is likely to cause death,³ or with the knowledge that he is likely by such act to cause death,⁴ commits the offence of culpable homicide.

Culpable homicide.

ILLUSTRATIONS.

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

COMMENT.—Homicide is the killing of a human being by a human being. It is either (A) lawful, or (B) unlawful.

(A) Lawful homicide, or simple homicide, includes several cases falling under the General Exceptions (Ch. IV).

(B) Unlawful homicide includes—

(1) Culpable homicide not amounting to murder (s. 299).

(2) Murder (s. 300).

(3) Rash or negligent homicide (s. 304A).

(4) Suicide (ss. 305, 306).

(A) **Lawful or simple homicide.**—This is committed where death is caused in one of the following ways:—

1. Where death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution (s. 80).

2. Where death is caused justifiably, that is to say,

(i) By a person, who is bound, or by mistake of fact in good faith believes himself bound, by law (s. 76).

(ii) By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (s. 77).

(iii) By a person acting in pursuance of the judgment or order of a Court of Justice (s. 78).

(iv) By a person who is justified or who by reason of a mistake of fact, in good faith, believes himself to be justified by law (s. 79).

(v) By a person acting without any criminal intention to cause harm and in good faith, for the purpose of preventing or avoiding other harm to person or property (s. 81).

(vi) Where death is caused in the exercise of the right of private defence of person or property (ss. 100, 103).

3. Where death is caused by a child, or a person of unsound mind, or an intoxicated person as will come under ss. 82, 83, 84 and 85.

4. Where death is caused unintentionally by an act done in good faith for the benefit of the person killed, when

(i) he or, if a minor or lunatic, his guardian has expressly or impliedly consented to such an act (ss. 87, 88); or

(ii) Where it is impossible for the person killed to signify his consent or where he is incapable of giving consent, and has no guardian from whom it is possible to obtain consent, in time for the thing to be done with benefit (s. 92).

(B) **Unlawful homicide.**—Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing

(i) an act with the intention of causing death;

(ii) an act with the intention of causing such bodily injury as is likely to cause death; or

(iii) an act with the knowledge that it was likely to cause death.

Without one or other of those elements, an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide.¹

English law.—Manslaughter is the unlawful killing of another without malice aforethought, express or implied. It is of two kinds: (1) voluntary, and (2) involuntary. *Rahce.*

(1) Voluntary manslaughter: where a man greatly provokes another, and the other kills him; or where upon a sudden quarrel, two persons fight, and one of them kills the other.

These two cases are met by Exceptions (1) and (4) to s. 300.

(2) Involuntary manslaughter: where death is caused by accident in doing an unlawful act not amounting to felony; or where death is caused by culpable neglect, i.e., while doing a lawful act in an unlawful manner.

The first case will not be culpable homicide under the Code, as will appear from ill.(c) to this section; and the second case is separately provided for by s. 304A.

Under the English law, it is neither murder nor manslaughter unless the death takes place within a year and a day from the blow or other cause. If the deceased died after that time, the law would presume that his death had proceeded from some other cause.² This rule is not adopted in the Code.

Ingredients.—The section has the following essentials:—

1. Causing of the death of a human being.
2. Such death must have been caused by doing an act
 - (i) with the intention of causing death; or
 - (ii) with the intention of causing such bodily injury as is likely to cause death; or
 - (iii) with the knowledge that the doer is likely by such act to cause death.

1. 'Causes death.'—Death means the death of a human being (s. 46). But this word does not include the death of an unborn child, *vide* Expln. (3). It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill; see ill.(a) and s. 301. The offence is complete as soon as any person is killed.

2. 'By doing an act with the intention of causing death.'—None of the endless variety of modes by which human life may be cut short before it becomes in the course of nature extinct, is excluded. Death may be caused by poisoning, starving, striking, drowning, and by a hundred different ways.

Under s. 32 words which refer to acts done extend also to illegal omissions, and the word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action (s. 43). Therefore death caused by illegal omission will amount to culpable homicide.

See cases under s. 300 relating to neglect to supply medical aid or food.

Death caused by effect of words on imagination or passions.—The authors of the Code observe: "The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if by speaking he has voluntarily caused Z's death, whether his words operate circuitously by inducing Z to swallow poison or directly by throwing Z into convulsions."

English law.—The English law takes no cognizance of homicide unless death results from bodily injury, caused by some act or omission, as distinguished from

¹ *Rahce*, (1866) Unrep. Cr. C. 6. P. C. 344.

² 1 Hawk. P. C., c. 13, s. 9, 1 East ³ Note M, p. 142.

death occasioned by an influence on the mind, or by any disorder or disease arising from such influence.

3. 'With the intention of causing such bodily injury as is likely to cause death.'—The connection between the 'act' and the death caused thereby must be direct and distinct; and though not immediate it must not be too remote. If the nature of the connection between the act and the death is in itself obscure, or if it is obscured by the action of concurrent causes, or if the connection is broken by the intervention of subsequent causes, or if the interval of time between the death and the act is too long, the above condition is not fulfilled.

4. 'With the knowledge that he is likely by such act to cause death.'—'Knowledge' is a strong word and imports a certainty and not merely a probability.

CASES.—Knowledge of probable consequence of act.—Beating.—Where a person struck at with a heavy stick and killed a man, being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but through terror, having taken no steps to satisfy himself that it was not a human being, he was held to have committed culpable homicide.¹

Beating for exorcising evil spirit.—Where the accused, in exorcising the spirit of a girl, whom they believed to be possessed, subjected her to a beating which resulted in her death, it was held that they were guilty of culpable homicide.²

Shooting.—Five or six persons were engaged in a free fight using hatchets and lathis, and some of them were shouting that they were being robbed of property. The accused not being in the fight himself and not knowing who were the robbers and who were the robbed, fired a shot at the crowd to scare them away but killed one of them. It was held that as he was guilty under the second part of s. 304 as he must have known that if the shot hit one of the crowd in a vital part of his body he would be killed.³

Clauses 1 and 2.—'Intention of causing such bodily injury as is likely to cause death.'—'Knowledge that he is likely by such act to cause death.'—The practical difference between these two phrases is expressed in the punishment provided in s. 304. But the phrase 'with the knowledge that he is likely by such act to cause death' includes all cases of rash acts by which death is caused, for rashness imports a knowledge of the likely result of an act which the actor does in spite of the risk.

Death caused without 'requisite intention' or 'knowledge' not culpable homicide.—If death is caused under circumstances specified in s. 304, the person causing the death will be exonerated under that section. But if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence without any addition on account of such accidental death. See ill. (c) to this section. The offence of culpable homicide supposes an intention, or knowledge or likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt,⁴ or simple hurt.⁵ It is only where death is attributed to an injury which the offender did not know would endanger life or would

¹ *Kangla*, (1898) 18 A. W. N. 163. *Beg*, (1881) 3 All. 776.

² *Jamaludin*, (1892) Unrep. Cr. C. 603; *Kaku*, (1928) 10 Lah. 555.

³ *Budho*, [1944] Kar. 420.

⁴ *O'Brien*, (1880) 2 All. 766; *Idu*

⁵ *Safatulla*, (1879) 4 Cal. 815; *Fox*, (1879) 2 All. 522; *Randhir Singh*, (1881) 3 All. 597.

be likely to cause death and which in normal conditions would not do so notwithstanding death being caused, that the offence will not be culpable homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unknown to the person who inflicts the injury.¹ A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary and exceptional circumstances, be taken to know that he is likely to cause death. If the victim is actually killed the conviction in such cases ought ordinarily to be of the offence of culpable homicide.²

CASES.—In the course of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall on the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. It was held that this was simply a case of using criminal force.³ According to the English law this would be manslaughter. The accused, while engaged in a verbal wrangle with his wife, struck her a blow on the left side with great force, the effect of which was that she vomited and bled from the nose, and within little more than an hour died. The death was caused by the rupture of the spleen. It was held that he was guilty of grievous hurt only.⁴ Three persons attacked a fourth with clubs and death ensued through a fracture of the skull of the person so attacked. There was, however, no evidence to show either that the common intention of the assailants was to cause death or which of them actually struck the blow which fractured the skull of the deceased. It was held that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder.⁵ But in another case the facts of which were similar the same High Court held that the act of the accused amounted to culpable homicide not amounting to murder under s. 300, Exception 4.⁶ The accused struck three blows to the deceased with a club. One blow fractured the bones of the left forearm, another fractured a bone in the right hand, while the third fractured both bones of the left leg. In the case of the third injury gangrene supervened and death followed. It was held that the accused was guilty of either culpable homicide not amounting to murder or causing grievous hurt.⁷ The Madras High Court has doubted the correctness of this case in a case in which the accused cut the deceased with an instrument inflicting several injuries, three of which were grievous. The deceased died a fortnight after he received the injuries. According to medical evidence the cause of death was septicæmia and pyæmia resulting from the multiple injuries. None of the injuries could each by itself have caused the death, but cumulatively the injuries should prove fatal in the case of a normal man. It was held that the accused was guilty of murder as the cause of death could be directly associated with the act of the accused.⁸ Where the accused struck his wife a blow on her head with a ploughshare which, though not shown to be a blow likely to cause death, did in fact render her unconscious and, believing her to be dead, in order to lay the foundation of a false defence of suicide by hanging the accused hanged her on a beam by a rope and thereby caused her death by strangulation, it was held

¹ *Bai Jiba*, (1917) 19 Bom. L. R. 823. *Dattu Nana Pawar*, (1917) 19 Bom. L. R. 802; *Gouridas Namasudra*, (1906) 36 Cal. 659.

² *Mana*, (1930) 32 Bom. L. R. 1148, 1144.

³ *Acharjys*, (1877) 1 Mad. 224.

⁴ *Idu Beg*, (1881) 3 All. 776.

⁵ *Chandan Singh*, (1917) 40 All. 103; *Agra*, (1914) P. R. No. 37 of 1914;

⁶ *Gulab*, (1918) 40 All. 686, *Chandan Singh*, supra, dissented from.

⁷ *Rama Singh*, (1920) 42 All. 302.

⁸ *Dorasmami Servai*, [1944] Mad. 487, disapproving *Rama Singh*, sup.

that the accused was not guilty of culpable homicide. The Court convicted him of grievous hurt.¹

Death due to diseased spleen.—(1) Grievous hurt.—Where the accused gave a blow with a light bamboo stick, not more than an inch in diameter, to the deceased who was suffering from diseased spleen on the region of that organ, it was held that he was guilty of causing grievous hurt.²

The accused sat on the chest of the deceased and began to strangle him and would not desist despite entreaties of relations. Suddenly the deceased died owing to internal bleeding due to rupture of the spleen which was considerably enlarged. The other injuries were not sufficient to cause death if the spleen had not been ruptured. The fact of the enlarged spleen was not known to the accused. It was held that the accused was guilty of culpable homicide under the second part of s. 304 and not under s. 335 of grievous hurt.³

(2) Hurt.—The accused, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down, slapped her with his open hand. The woman died on account of the rupture of her spleen which was diseased. It was held that he was guilty of causing hurt.⁴ The accused, dissatisfied and irritated by the lazy and inefficient manner in which a punkha coolie was managing a punkha, went up to him and struck him one or more blows. The coolie was suffering from a diseased spleen and died from the injuries he had received. It was held that the accused was guilty of causing hurt.⁵ In the course of an altercation between the accused and the complainant on a dark night, the former aimed a blow with his stick at the head of the latter. To ward off the blow, the complainant's wife, who had a child on her arm, intervened between them. The blow missed its aim, but fell on the head of the child, causing severe injuries, from the effects of which it died. It was held that inasmuch as the blow, if it had reached the complainant, would have caused simple hurt, the accused was guilty of simple hurt only.⁶

Explanation 1.—A person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death.' But one of the elements of the offence of culpable homicide must be present.⁷

Explanation 2.—'By resorting to proper remedies...death might have been prevented.'—The authors of the Code observe: "We see no reason for excepting cases of persons who die of a slight wound, which, from neglect or from the application of improper remedies, have proved mortal, from the simple general rule which we propose."⁸

"Although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet if in fact death is the result, the wound 'causes' death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies and that death might have been prevented. 'Proper remedies and skilful treatment' may not be within the reach of the wounded man; or, if they are at

¹ *Palani Goundan*, (1919) 42 Mad. 547, F.B.

² *Mcgha Meeah*, (1865) 2 W. R. (Cr.) 39; *O'Brien*, (1880) 2 All. 766.

³ *Munni Lal*, [1943] All. 853.

⁴ *Punchamun Taniec*, (1866) 5 W. R. (Cr.) 97.

⁵ *Fox*, (1879) 2 All. 522; *Randhin Singh*, (1881) 3 All. 597.

⁶ *Chatur Natha*, (1919) 21 Bom. L. R. 1101.

⁷ *Fox*, *supra*.

⁸ Note M, p. 143.

hand, he may be unable or unwilling to resort to them. But this is immaterial so far as relates to the due interpretation of the words 'cause of death.' The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever,—and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is, that the death has been caused by the bodily injury, and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one."¹ If death results from an injury voluntarily caused, the person who causes that injury is deemed to have caused death although the life of the victim might have been saved if proper medical attention had been given, and even if medical treatment was given but was not the proper treatment, provided that it was administered in good faith by a competent physician or surgeon.²

Cases.—Where the accused was indicted for the murder of his wife by kicking her, and a surgeon administered brandy to her as a restorative, some of which went the wrong way, and entered her lungs, and might have caused her death, it was held that he was guilty of manslaughter.³ Similarly, where an injury was inflicted on a person by a blow which in the judgment of competent medical men rendered an operation advisable, and, as a preliminary to the operation, chloroform was administered to the patient, who died during its administration, and it was agreed that the patient would not have died but for its administration, it was held that the person causing the injury was liable to be indicted for manslaughter.⁴

Where a person causes simple injury to another but the latter subsequently dies of septic meningitis which developed on account of the use of wrong remedies and neglect in treatment, the death cannot be said to have been caused by the bodily injury within the terms of this Explanation, and the person causing the injury cannot be convicted of culpable homicide not amounting to murder under s. 304.⁵

Explanation 3.—The causing of death of a child in the mother's womb is not homicide, such an offence is punishable under s. 315. But it is homicide to cause the death of a living child; if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Under the English law it is necessary that the child should have completely emerged.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

• Murder.

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

¹ M. & M. 228.

² *San Pat*, (1936) 14 Ran. 643, as explained in *Abur Ahmed*, [1937] Ran. 384, F.S.

³ *McIntyre*, (1847) 3 Cox 379.

⁴ *Davis*, (1883) 15 Cox 174.

⁵ *Sobha*, (1935) 11 Luck. 401.

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

ILLUSTRATIONS.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a pre-meditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst When culpable homicide is not murder. deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes death of any other person by mistake or accident.

The above Exception is subject to the following provisos :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

ILLUSTRATIONS.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

ILLUSTRATION.

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

ILLUSTRATION.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

COMMENT.—In this section the definition of culpable homicide appears in an expanded form. Each of the four clauses requires that the act which causes death should be done intentionally, or with the knowledge or means of knowing that death is a natural consequence of the act.

Scope.—An offence cannot amount to murder unless it falls within the definition of culpable homicide; for this section merely points out the cases in which culpable homicide is murder. But an offence may amount to culpable homicide without amounting to murder.

It does not follow that a case of culpable homicide is murder, because it does not fall within any of the Exceptions to s. 300. To render culpable homicide murder the case must come within the provisions of clause 1, 2, 3, or 4 of s. 300.

—Culpable homicide and murder distinguished.—The distinction between these two offences is very ably set forth by Melvill, J., in *Gopinda's case*.¹

“For convenience of comparison, the provisions of Sections 299 and 300 may be stated thus :—

SECTION 299.

A person commits culpable homicide, if the act by which the death is caused is done

(a) With the intention of causing death;

(b) With the intention of causing such bodily injury as is likely to cause death;

(c) With the knowledge that...the act is likely to cause death.

SECTION 300.

Subject to certain exceptions, culpable homicide is murder, if the act by which the death is caused is done

(1) With the intention of causing death;

(2) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(3) With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

(4) With the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

“I have italicised the words which appear to me to mark the difference between the two offences.

“(a) and (1) show that where there is an intention to *kill*, the offence is always murder.

“(c) and (4) appear to me intended to apply (I do not say that they are necessarily limited) to cases in which there is no intention to cause death or bodily injury. Furious driving, firing at a mark near a public road, would be cases of this description. Whether the offence is culpable homicide or murder, depends upon the degree

¹ (1876) 1 Bom. 342, 344, 346; *Ratan*, (1932) 7 Luck. 634.

of risk to human life. If death is a likely result, it is culpable homicide most probable result, it is murder.

"The essence of (2) appears to me to be found in the words which I have *italicised*. The offence is murder, if the offender *knows* that the *particular person injured* is likely, either from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. The illustration given in the section is the following :—

" 'A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.'

"There remain to be considered (b) and (8), and it is on a comparison of these two clauses that the decision of doubtful cases...must generally depend. The offence is culpable homicide, if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. The distinction is fine, but appreciable. It is much the same distinction as that between (c) and (4), already noticed. It is a question of degree of probability. Practically, I think, it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death."

In this case the accused had knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she had died in consequence, either on the spot, or very shortly afterwards, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death. It was held that the offence committed was that of culpable homicide not amounting to murder.¹

As regards (c) Peacock, C. J., observes in *Gora Chand Gope's* case: "There are many cases falling within the words of section 299 'or with the knowledge that he is likely by such act to cause death' that do not fall within the 2nd, 3rd, or 4th clause of section 300, such for instance as the offences described in sections 279, 280, 281, 282, 284, 285, 286, 287, 288 and 289, if the offender knows that his act or illegal omission is likely to cause death, and if in fact it does cause death. But, although he may know that the act or illegal omission is so dangerous that it is likely to cause death, it is not murder, even if death is caused thereby, unless the offender knows that it must in all probability cause death, or such bodily injury as is likely to cause death, or unless he intends thereby to cause death or such bodily injury as is described in clause 2 or 3 of section 300.

"As an illustration, suppose a gentleman should drive a buggy in a rash and negligent manner, or furiously along a narrow crowded street. He might know that he was likely to kill some person, but he might not intend to kill any one. In such a case, if he should cause death, I apprehend he would be guilty of culpable homicide not amounting to murder, unless it should be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, &c., as to bring the case within the 4th clause of section 300. In an ordinary case of furious driving, the facts would scarcely warrant such a finding...If a man should drive a buggy furiously, not merely along a crowded

¹ *Govinda*, (1876) 1 Bom. 342.

² (1866) 5 W. R. (Cr.) 45, 46, F.B.

street, but intentionally into the midst of a crowd of persons, it would probably be found as a fact that he knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury, &c., as in clause 4, section 300.

"From the fact of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the circumstances of the case justify such a presumption; but I should never presume an intention to cause death merely from the fact of furious driving in a crowded street in which the driver might know that his act would be likely to cause death. Presumption of intention must depend upon the facts of each particular case.

"Suppose a gentleman should cause death by furiously driving up to a Railway Station. Suppose it should be proved that he had business in a distant part of the country, say at the opposite terminus; that he was intending to go by a particular train; and that he could not arrive at his destination in time for his business by any other train; that at the time of the furious driving it wanted only two minutes to the time of the train's starting; that the road was so crowded that he must have known that he was likely to run over some one, and to cause death. Would any one under the circumstances presume that his intention was to cause death? Would it not be more reasonable to presume that his intention was to save the train? If the Judge or jury should find that his intention was to save the train, but that he must have known that he was likely to cause death, he would be guilty of culpable homicide not amounting to murder, unless they should also find that the risk of causing of death was such that he must have known, and did know, that his act must in all probability cause death, &c., within the meaning of clause 4, section 300.

"If they should go further, and infer from the knowledge that he was likely to cause death, that he intended to cause death, he would be guilty of murder, and liable to capital punishment."

Putting it shortly, all acts of killing done

- (1) with the intention to kill, or
- (2) to inflict bodily injury likely to cause death, or
- (3) with the knowledge that death must be the most probable result, are *prima facie* murder, while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder.¹

Where, therefore, the act of the accused does not fall within the first clause of s. 300, that is, where the act was done not *with the intention of causing death*, the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been known to be a *probable* result. It is murder where it must have been known to be the *most probable* result.

English law.—Murder is unlawfully causing the death of another with malice aforethought, express or implied. Malice aforethought in murder practically means—

- (1) An intent to kill or do grievous bodily harm to the person who is killed.
- (2) An intent to kill or do grievous bodily harm to any one else.
- (3) An intent to do any criminal act which will probably cause death or grievous bodily harm to some one.
- (4) An intent to oppose by force any officer of justice who is lawfully arresting

¹ Per Straight, J., in *Idu Beg*, (1873) 6 N. W. P. 26.
(1881) 8 All. 776, 778: *Girdharee Singh*,

or keeping in custody some one whom he is entitled to arrest or keep in custody provided the accused knows that he is such officer of justice.

Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt. In every charge of murder, if the prosecution have proved homicide, namely, the killing by the accused, the prosecution must prove further that the killing was malicious and murder, as there is no presumption that the act was malicious, and at no point of time in a criminal trial can a situation arise in which it is incumbent upon the accused to prove his innocence, subject to the defence of insanity and subject also to any statutory exception. Where intent is an ingredient of a crime there is no onus on the accused to prove that the act alleged was accidental.¹

Clause 1.—'Act by which the death is caused is done with the intention of causing death.'—The word 'act' includes omission as well (s. 33). Any omission by which death is caused will be punishable as if the death is caused directly by an act. Thus, where a person neglected to provide his child with proper sustenance although repeatedly warned of the consequences and the child died, it was held to be murder.² Where a mistress omitted to supply her servant with proper food and lodging and so caused her death, the Court remarked: "The law clearly is that, if a person has the custody and charge of another and neglect to supply proper food and lodging, such person is responsible, if from such neglect death results to the person in custody; but it is also equally clear that, when a person, having the free control of her actions and able to take care of herself, remains in a service where she is starved and badly lodged, the mistress is not criminally responsible for any consequence that may ensue."³

Clause 2.—'With the intention of causing such bodily injury as the offender knows to be likely to cause the death.'—This clause applies where the act by which death is caused is done with the intention of causing such bodily injury as the offender *knows to be likely to cause the death of the person to whom the harm is caused*. It applies in special cases where the person injured is in such a condition or state of health that his or her death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound health, and where the person inflicting the injury *knows* that owing to such condition or state of health it is likely to cause the death of the person injured.

Cases.—Where the accused several times kicked the deceased, who after having been severely beaten fell down senseless, it was held that he was guilty of murder as he must have known that such kicks were likely to cause the death of the deceased.⁴ Where a man struck another on the head with a stick when he was asleep and fractured his skull, it was held that knowledge of likelihood of causing death must be presumed and that he was guilty of murder.⁵ Where there was an exchange of abuse between the accused and the deceased, and the accused picked up a rice pounder and hit the deceased with such force as to cause fracture of his skull and he died a few hours later, it was held that the accused was guilty of murder as he had acted in a cruel and unusual manner.⁶ Where a person administered arsenic to a boy of nine years of age with the object of preventing the father of the boy from appearing as a witness against him, it was held that he was guilty of murder.⁷

¹ *Woolmington v. The Director of Public Prosecutions*, [1935] A. C. 402. (Cr.) 22.

⁵ *Sheikh Cholily*, (1865) 4 W. R. (Cr.)

² *Gunga Singh*, (1873) 5 N. W. P. 41.

35.

³ *Smith's Case*, (1865) L. & C. 607,

⁶ *Muniandi Servai*, [1944] Mad. 818.

624.

⁷ *Gauri Shankar*, (1918) 40 All. 360.

⁴ *Nilmadhub Sircar*, (1865) 3 W. R.

Poisoning.—Where a woman of twenty years of age was found to have administered *dhatura* (a poisonous herb) to three members of her family, it was held that she must be presumed to have known that the administration of *dhatura* was likely to cause death, although she might not have administered it with that intention.¹ Where a person recklessly administers *dhatura* to another, he is guilty, if death ensue, of the offence of murder and not merely of culpable homicide not amounting to murder or of grievous hurt.² Where *dhatura* was administered with the object of facilitating robbery but in such quantity that the person to whom it was given died in the course of a few hours, it was held that the person administering *dhatura* was guilty of murder.³ Where *dhatura* was administered by a woman to her husband to save her from the quarrelsome tongue of her husband who became ill but did not die and she did not know what it was but it was supplied to her by her lover, it was held that she was guilty under s. 337 as she administered without care an unknown powder, but that the lover was guilty under ss. 307 and 109.⁴

Clause 3.—‘With the intention of causing bodily injury to any person... sufficient in the ordinary course of nature to cause death.’—The distinction between this clause and clause 2 of s. 299 depends upon the degree of probability of death from the act committed. If from the intentional act of injury committed the probability of death resulting is high, the finding will be that the accused intended to cause death, or injury sufficient in the ordinary course of nature to cause death; if there was probability in a less degree of death ensuing from the act committed, the finding will be that the accused intended to cause injury likely to cause death. where a man intentionally kills another, or intentionally inflicts bodily injury sufficient in the ordinary course of nature to cause death, his act is murder.⁵ The accused dealt several blows with a fairly heavy lathi on the body of the deceased causing fracture of two ribs, injury to the pleura, and laceration and puncture of the right lung. It was held that the accused was guilty of murder.⁶

If the probability of death is very great then the requirements of the third clause are satisfied, and the fact that a particular individual may by the fortunate accident of his having secured specially skilled treatment, or being in possession of a particularly strong constitution, have survived an injury, which would prove fatal to the majority of persons subjected to it, is not enough to prove that such an injury is not sufficient “in the ordinary course of nature” to cause death. It cannot be said that an injury sufficient in the ordinary course of nature to cause death is an injury which inevitably and in all circumstances must cause death.⁷

Where an injury is intentionally inflicted the defence that no proper medical treatment was forthcoming does not exonerate the person who caused the injury from guilt of murder if he intended that the injury should be sufficient in the ordinary course of nature to cause death, or knew that it was likely to cause death to that person. It does not exonerate him from guilt of culpable homicide if death ensues as a natural or likely consequence. Such a person is deemed to have caused the death and his degree of criminal responsibility must depend on the knowledge or intention to be gathered from the proved facts.⁸

¹ *Tulsha*, (1897) 20 All. 148; *Mst. Minai*, [1940] Nag. 125.

² *Nanhu*, (1923) 45 All. 557.

³ *Gutali*, (1908) 81 All. 148; *Shetya*, (1926) 28 Bom. L. R. 1003; *Bhagwan Din*, (1908) 30 All. 568, in which under similar circumstances it was held that

the act amounted to grievous hurt, not followed.

⁴ *Gauri Shankar*, (1918) 40 All. 360.

⁵ *Bhola Bind*, (1943) 22 Pat. 607.

⁶ *Babu Lal Beharilal*, [1945] Nag. 931.

⁷ *Singaram*, [1944] Mad. 763.

⁸ *Abor Ahmed*, [1937] Ran. 384, F.B.

Cases.—Two men met each other in a drunken state and commenced a quarrel during which they abused each other. This lasted for about half an hour, when one of them ran to his own house and came back with a heavy pestle with which he struck the other a violent blow on the left temple causing instant death. It was held that the offence fell within clauses 2 and 3.¹ Where the accused inflicted a stab with a sharp-pointed weapon which entered the upper part of the deceased's stomach, causing rupture of it, it was held that his act came under this clause.² Where the joint intention of the accused was to give such a beating as would break the bones of the legs and arms with reckless disregard of the consequences and even if none of them intended death, or knew that death would follow the beating, they did intend a beating, the almost inevitable result of which was death and the case fell under this clause.³

Clause 4.—'Person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death.'—Where it is clear that the act by which the death is caused is so imminently dangerous that the accused must be presumed to have known that it would, in all probability, cause death or such bodily injury as is likely to cause death, then unless he can meet this presumption his offence will be culpable homicide, and it would be murder unless he can bring it under one of the Exceptions.⁴ Thus, a man who strikes at the back of another a violent blow with a formidable weapon⁵ or who strikes another in the throat with a knife⁶ must be taken to know that he is doing an act imminently dangerous to the life of the person at whom he strikes and that a probable result of his act will be to cause that person's *flagrant*

This clause also provides for that class of cases where the acts resulting in culpable are calculated to put the lives of many persons in jeopardy without being aimed at any one in particular, and are perpetrated with a full consciousness of the probable consequences, e.g., where death is caused by firing a loaded gun into a crowd [*vide* *Ill. (d)*], or by poisoning a well from which people are accustomed to draw water.

Cases.—Where the accused, four in number, all armed with heavy sticks, felled the deceased, who was defenceless and armless, gave him a prolonged beating and inflicted several blows completely smashing the skull, it was held that they were all guilty of murder under this clause.⁷

Where a snake charmer, to show his own skill, placed a venomous snake, whose fangs had not been extracted, on the head of a spectator, without the intention to cause harm, and the spectator in trying to push off the snake was bitten and died in consequence, it was held that he was guilty under cl. 3 of s. 209.⁸ Where the accused professed to render a person immune from the effect of snake-bite by tattooing, and afterwards caused a poisonous snake to bite him and he died, it was held that he was guilty of murder.⁹ Where the accused offered a child to a crocodile under a superstitious but *bona fide* belief that the child would be returned unharmed, and it was held that he was guilty of an offence punishable under this clause.¹⁰ A village woman of twenty was ill-treated by her husband. There was a quarrel between the two, and the husband threatened that he would beat her

¹ *Dusser Bhooyan*, (1867) 8 W. R. 330.

R. (1.) 71.

² *Hamid*, (1903) 2 L. B. R. 63;

Summanuduli, (1946) 25 Pat. 335.

³ *Rahman*, (1938) 20 Lah. 77.

⁴ *Lakshman*, (1888) Unrep. Cr. C.

111.

⁵ *Nga Maung*, (1907) 18 Burma L.

⁶ *Judagi Mullah*, (1929) 8 Pat. 911.

⁷ *Kanhai*, (1912) 11 A. L. J. R. 752;

Lati, [1937] Nag. 388.

⁸ *Ganesh Dooley*, (1879) 5 Cal. 351.

⁹ *Nga Ba Tu*, (1921) 11 L. B. R. 56.

¹⁰ *Bharat*, (1920) 33 C. L. J. 179.

Late that night the woman, taking her six months old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband was pursuing her she got into a panic and jumped down a well nearby with the baby in her arms. The baby died but the woman was recovered. She was charged with murder of the child and with attempt to commit suicide. It was held that an intention to cause the death of the child could not be attributed to the accused, though she must be attributed with the knowledge—however primitive or frightened she might have been—that such an imminently dangerous act as jumping down the well was likely to cause the child's death; but the culpable homicide did not amount to murder because, considering the state of panic she was in, there was "excuse for incurring the risk of causing death," within the purview of the fourth paragraph of this section. She was held guilty of culpable homicide.¹

- **Poison.**—A person who administers a well-known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and if death ensue he is guilty of murder, notwithstanding that his intention may not have been to cause death.²

Exception 1.—Provocation.—Anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished entirely with ferocity or other evil feelings.

The act must be done whilst the person doing it is deprived of self-control by grave and sudden provocation. That is, it must be done under the immediate impulse of such a provocation.³ The provocation must be *grave and sudden* and of such a nature as to deprive the accused of the power of self-control. It is not a necessary consequence of anger, or other emotion, that the power of self-control should be lost.⁴ The provocation must be such as will upset, not merely a hasty and hot-tempered or hyper-sensitive person but one of ordinary sense and calmness.⁵ It must be shown distinctly not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.⁶ If it appear that the party, before any provocation is given, intended to use a deadly weapon towards any one who might assault him, this would show that a fatal blow given afterwards was not to be attributed to the provocation, and the crime would therefore be murder.⁷ If the act was done after the first excitement had passed away, and there was time to cool, it is murder.⁸

Confession of adultery by woman.—Although a confession of adultery by a wife to her husband, who in consequence kills her, is such provocation as will entitle the jury in their discretion to find a verdict of manslaughter instead of murder, a similar confession of illicit intercourse by a woman who was not the accused's wife but only engaged to be married to him cannot, if he kills her in consequence, justify such a verdict.⁹ A man in love with a woman who has repulsed his suit might be so angry as to lose control of himself at the sight of her engaged in sexual inter-

¹ *Dhirajia*, [1940] All. 647.

² *Bhagava Guriyappa*, (1916) 10 Bom. L. R. 54.

³ *Nokul Nushy*, (1867) 7 W. R. (Cr.) 27.

⁴ *Dcvi Govindji*, (1895) 20 Bom. 215; *Kesur Singh*, (1877) P. R. No. 10 of 1878; *Ghausur Singh*, (1884) P. R.

No. 33 of 1884.

⁵ *Sohrab*, (1924) 5 Lah. 67; *Khadim Hussain*, (1920) 7 Lah. 488; *Dost Raj*, [1939] Lah. 345.

⁶ *Huri Giree*, (1868) 10 W. R. (Cr.) 20.

⁷ *Thomas*, (1837) 7 C. & P. 817.

⁸ *Lochan*, (1886) 8 All. 685.

⁹ *Palmer*, [1913] 2 K. B. 29.

course with another, but if he kills one or both of them, he cannot plead grave provocation in mitigation of his offence. The law that when a husband discovers his wife in the act of adultery and thereupon kills her, he is guilty of manslaughter and not murder, has no application where the woman concerned is not the wife of the accused.¹

Cases.—Adulterous intercourse is held, in several cases, to give grave and sudden provocation. The accused and his wife's sister's husband, B, were sleeping on the same cot (*charpai*) in the verandah, and the accused's wife was sleeping in the adjoining room. Some time in the night B got up and went into the room and bolted the door behind him. The accused also got up and peeping through a chink in the door saw B and the accused's wife having sexual intercourse. The accused returned to his *charpai* and lay down on it. After some time B came out of the room and lay down on the *charpai* by the side of the accused. After a short time, when B began dozing the accused stabbed him several times with a knife and killed him. There was no evidence that the accused had to go anywhere to search for the knife, which, apparently, was with him. It was held that the case came within this Exception notwithstanding the interval of time between the seeing of the act of adultery and the killing of B, and the accused having acted under grave and sudden provocation the offence committed was one under s. 304 and not under s. 302.² A Pathan father and his son and his son's wife were living together. The son's wife had contracted a liaison with a barber. One day the father seeing the barber entering into his house in his absence called his son who was nearby and both of them came to the house and found the wife and the barber in flagrant delicto and killed both of them. It was held that this exception was applicable to the case.³

However, if the death of the adulterer is caused not in a fit of passion but with subsequent deliberation, this Exception does not apply. Where the accused finding a man intriguing with his wife, beat him and after taking him to the bank of a river, cut off his head;⁴ where the accused's concubine refused to abandon another connection and the accused, after remonstrating with the woman and leaving her, followed and killed her with a dagger which he had purchased with the intention of killing her;⁵ where the accused, suspecting infidelity in his wife, followed her with a hatchet on one night when she stealthily left his house, and finding her talking with her paramour, there and then killed her;⁶ and where the accused, suspecting the widow of his cousin, followed her one night with a sword in hand, to a considerable distance, and finding her actually having connection with her lover killed her there and then,⁷ it was held in all these cases that the offence of murder was committed. No doubt in all these cases there was provocation, but the acts were not committed while the accused were deprived of the power of self-control, they were not the offspring of the moment, but were the result of cool and mature consideration after the first excitement had passed away.

Quarrel.—A quarrel took place amongst the members of a family. Accused No. 1 and accused No. 2 ran from their field to the scene of the occurrence. Accused No. 2 was so annoyed as the quarrel continued that he took his pitch-fork and struck it on the head of the deceased. Accused No. 1 immediately struck a heavy stick on the

¹ *Murgi Munda*, (1938) 18 Pat. 101.

² *Balku*, [1938] All. 789; *Hussain*, [1939] Lah. 278.

³ *Chanan Khan*, [1944] Lah. 72.

⁴ *Yasin Sheikh*, (1869) 12 W.R. (Cr.) 368.

⁵ *Ghantappa*, (1882) 1 Weir 306.

⁶ *Mohan*, (1886) 8 All. 622.

⁷ *Lochan*, (1886) 8 All. 635.

head of the deceased. The deceased fell down and died on the following day. It was held that each of the accused was responsible for his own act as there was no common intention; that accused No. 1 was guilty of murder but accused No. 2 was guilty of causing hurt with a dangerous weapon under s. 324.¹

Exception 2.—Exceeding right of private defence.—This Exception provides for the case of a person who exceeds the right of private defence. The authors of the Code observe: "Wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think, that it will always be expedient to make a separation between murder and...voluntary culpable homicide in defence.

"The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed; but it authorizes acts which lie very near to such homicide; and this circumstance, we think, greatly mitigates the guilt of such homicide.

"That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished, would be most dangerous. The law punishes and ought to punish such killing; but we cannot think that the law ought to punish such killing as murder; for the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage; to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg; and it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant; that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death."²

Cases.—No right of private defence.—Where a person wilfully killed another whilst endeavouring to escape, after having been detected in the act of house-breaking by night for the purpose of theft,³ and where the accused pursued a thief, and killed him after a house-trespass had ceased,⁴ it was held that the accused were guilty of murder and they did not come under the Exception. Where the accused finding a feeble old woman stealing his crop, beat her so violently that she died from the effect of the attack it was held that he was guilty of murder.⁵

Threats of incantations give no right of defence.—The accused and the deceased met one day in a liquor shop, and there drank together. They afterwards walked in company and on their way an altercation took place in respect of the deceased having caused the death of the accused's four children by incantations. The deceased admitted that he had so caused their death, and added that he would also bring about the death of the accused by causing the accused to be taken by a tiger. The accused, thereupon, killed the deceased with several blows of a heavy

¹ *Chenchuramayya*, [1946] Mad. 809. R. (Cr.) 9.

² Note M, p. 147.

³ *Gokool Bowree*, (1866) 5 W.R. (Cr.)

⁴ *Durwan Gurr*, (1866) 5 W.R. (Cr.) 73. 33; *Mamun*, (1916) P. R. No. 35

⁵ *Balakee Joluhed*, (1868) 10 W. of 1910.

stick. It was held that the accused had no reasonable apprehension of danger to himself from the threats of the deceased and that his case was not taken out of the category of murder by reason of this Exception.¹ Similarly, threat of witchcrafts does not justify the causing of death.²

Exception 3.—Public servant exceeding his power.—This Exception protects a public servant, or a person aiding a public servant acting for the advancement of public justice, if either of them exceed the powers given to them by law, and cause death. It gives protection so long as the public servant acts in good faith but if his act is illegal and unauthorized by law, or if he glaringly exceed the powers entrusted to him by law, the Exception will not protect him. Where death was caused by a constable under orders of a superior, it being found that neither he nor his superior believed that it was necessary for public security to disperse certain reapers by firing on them, it was held that he was guilty of murder since he was "not protected in that he obeyed the orders of his superior officer."³

Exception 4.—Death caused in sudden fight.—The fight should not have been pre-arranged. A fight is not *per se* a palliating circumstance, only an unpremeditated fight can be such.⁴ The lapse of time between the quarrel and the fight is therefore a very important consideration. If there intervened a sufficient time for passion to subside and for reason to interpose, the killing would be murder.⁵ This Exception was held not to apply to a case where two bodies of men, for the most part armed with deadly weapons, deliberately entered into an unlawful fight, each being prepared to cause the death of the other, and aware that his own might follow, but determined to do his best in self-defence, and in the course of the struggle death ensued.⁶ An unpremeditated assault (in which death is caused) committed in the heat of passion upon a sudden quarrel comes within the Exception.⁷

The word 'fight' conveys something more than a verbal quarrel.⁸

Exception 5.—Death caused of the person consenting to it.—The following reasons are given for not punishing homicide by consent so severely as murder: "In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who in ancient times held out the sword that his master might fall on it, the high-born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law as assassins."⁹

This Exception abrogates the rule of English law that a combatant in a fair duel who kills his opponent is guilty of murder. Under this Exception the person who is killed in a duel "suffers or takes the risk of death by his own choice." In

¹ *Gobadur Bhooyan*, (1870) 13 W.R. (Cr.) 55.

² *Gandawa Nayako*, (1882) 1 Weir 305.

³ *Subba Naik*, (1898) 21 Mad. 249.

⁴ *Rohimuddin*, (1879) 5 Cal. 81.

⁵ *Foster*, 296.

⁶ *Nayamuddin*, (1891) 18 Cal. 484, F.R.

⁷ *Zalim Rai*, (1864) 1 W.R. (Cr.) 33; *Ameera*, (1866) P. R. No. 12 of 1866.

⁸ *Sunnusmudulli*, (1946) 25 Pat. 835.

⁹ Note M, p. 145.

applying the Exception it should first be considered with reference to the act consented to or authorised, and next with reference to the person or persons authorised, and as to each of those some degree of particularity at least should appear upon the facts proved before the Exception can be said to apply. It must be found that the person killed with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death.¹

The case supposed in the illustration to Exception 5 is one of the offences expressly made punishable by s. 305.

Cases.—Where the accused caused a pile to be lighted, and persuaded a *suttee* to re-ascend it, after she had once left it, and she was burnt;² where the accused acting upon the express desire of an adult emaculated him and death ensued owing to the rough manner of the operation;³ where the accused repeatedly requested by his wife, who was overwhelmed with grief at the death of her child, to kill her, did kill her one night while she was asleep;⁴ and where certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake, and from the effect of the bite three of such persons died,⁵ it was held in all those cases that the accused were protected by this Exception, because the element of consent was present.

Death caused by voluntary act of deceased resulting from fear of violence—If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result.⁶ If, for instance, four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, their act would amount to murder.⁷

Discovery of body of person murdered not necessary.—The mere fact that the body of a murdered person has not been found is not a ground for refusing to convict the accused of murder. But when the body is not forthcoming, the strongest possible evidence as to the fact of the murder should be insisted on before conviction.⁸

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

COMMENT.—This section lays down that culpable homicide may be committed

¹ *Nayamuddin*, (1861) 18 Cal. 484, R. (Cr.) 57.

² *Poonai Fattemah*, (1869) 12 W. R. (Cr.) 7.

³ *Sahebloll Reetloll*, (1863) 1 R. J. P.-J. 174.

⁴ *Baboolun Hijrah*, (1866) 5 W. R. 702.

⁵ *Haldiday*, (1889) 61 L. T. 701.

⁶ *Towers*, (1874) 12 Cox 530, 533.

⁷ *Anunto Rurnagat*, (1866) 6 W. R. 635.

⁸ *Adu Shikdar*, (1885) 11 Cal. 635.

by causing the death of a person whom the offender neither intended, nor knew himself to be likely, to kill.

If the killing take place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out.

Where a mistake is made in respect of the person, as where the offender shoots at A supposing that he is shooting at B, it is clear that the difference of person can make none in the offence or its consequences; the crime consists in the wilful doing of a prohibited act; the act of shooting at A was wilful, although the offender mistook him for another.

Similarly, there will be no difference where the injury intended for one falls on another by accident. If A makes a thrust at B, meaning to kill, and C throwing himself between, receives the thrust and dies, A will answer for it as if his mortal purpose had taken place on B.

The same principle is applicable where, through accident or the mistake of a party not privy to the criminal design, the mischief falls either on a person not intended, or on the party intended but in a different manner from that intended. A, designing to poison her own child, who lived in the house of B, delivered to B a bottle of poison, with directions to administer a portion of it to the child; B, not knowing that the bottle contained poison, left it on the mantelpiece in her house, having forgotten to administer any portion of it to the child: during her absence C, the son of B (a child of five years old) finding the bottle on the mantelpiece, administered a portion to the child of A, and the child died of the poison. It was held that A was guilty of murder.¹

If A counsels B to poison his wife, B accordingly obtains poison from A and gives it to his wife in a roasted apple, the wife gives it to a child of B not knowing it contained poison, who eats it and dies, this is murder in B though he intended nothing to the child.²

CASES.—The accused, with the intention of killing A, on whose life he had effected insurance, gave him some poisoned sweetmeat. A ate a portion of it and threw the rest away which was picked up by the daughter of the accused's brother-in-law, aged eight years, without the knowledge of the accused. She ate it and gave some to another little child. The two children died from the effect of the poison, but A eventually recovered. It was held that the accused was guilty of murder.³ A woman had been carrying on an intrigue with a man who gave her some poison to administer to her husband. She prepared sweetmeats mixed with the poison which was eaten by her husband and four others. Her husband and three others suffered considerably but did not die but the fifth man died. She intended to kill her husband and not the man who died. It was held that she was guilty of murder.⁴

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder.

COMMENT.—This section provides punishment for murder; s. 304, for culpable homicide not amounting to murder.

¹ 7th Parl. Rep. 26; *Jeoli*, (1910) 39 All. 191.

² 1 Hale P. C. 496.

³ *Suryanarayana moorthy*, [1912] M. W. N. 136.

⁴ *Jeoli*, (1916) 39 All. 161.

Punishment for
murder by life convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

COMMENT.—This section makes capital sentence compulsory in the case of a convict who commits murder while undergoing a sentence of transportation.

But a convict, whose sentence of transportation for life has been remitted without condition by Government, can no longer be said to be under a sentence of transportation, and this section will not apply.¹

304. Whoever commits culpable homicide not amounting to murder,

Punishment for
culpable homicide not
amounting to murder.

shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

COMMENT.—This section provides punishment for culpable homicide not amounting to murder. Under it there are two kinds of punishments applying to two different circumstances :

(1) If the act by which death is caused is done with the *intention* of causing death or such bodily injury as is likely to cause death, the punishment is transportation for life, or imprisonment of either description for a term which may extend to ten years and fine.

(2) If the act is done with the *knowledge* that it is likely to cause death but *without any intention* to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years or with fine, or with both.

CASES.—The accused killed his step-father, who was an infirm old man and an invalid, with the latter's consent, his motive being to get three innocent men (his enemies) hanged. It was held that the offence was covered by the fifth Exception to s. 300 and was punishable under the first part of this section.²

304A. Whoever causes the death of any person by doing any rash or negligent act¹ not amounting to culpable homicide² shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—The provisions of this section apply to cases where there is no intention to cause death, and no knowledge that the act done in all probability would cause death.³

¹ Ghulam Muhammad, [1948] Kar. of 1917.

25. ² Sukarao Kobiraj, (1887) 14 Cal. 566,

³ Ujagar Singh, (1917) P. R. No. 45 569; Chhailu, [1941] All. 441.

Scope.—Where the act is in its nature criminal, the section has no application.¹ The section does not apply to cases where the death has arisen, not from the negligent or rash mode of doing the act, but from some result supervening upon the act which could not have been anticipated.² The section deals with homicide by negligence.

This section does not apply to a case in which there has been the voluntary commission of an offence against the person. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338 or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge or means of knowledge of the offender, and placed in their appropriate place in the class of offences of the same character.³ Where a man strikes at another with a spear, he is committing a criminal offence, and that offence remains just the same whether he hits his intended victim or by chance hits a third person who intervenes between the two.⁴

1. 'Rash or negligent act.'—*Criminal rashness* is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. *Criminal negligence* is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.⁵

"Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness (*luzuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception...It is clear, however, that if the words, 'not amounting to culpable homicide,' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death."⁶

A rash act is primarily an overhasty act and is opposed to a deliberate act, even if it is partly deliberate, it is done without due thought and caution.⁷

¹ *Damodaran*, (1888) 12 Mad. 56.

² *Heera*, (1901) 3 Bom. L. R. 394.

³ *Ketabdi Mundul*, (1879) 4 Cal. 764, 766.

⁴ *Chhalla*, [1941] All. 441.

⁵ *Pe*: Straight, J., in *Idu Beg*, (1881) 3 All. 776, 780; *Atra*, (1891)

P. R. No. 9 of 1891.

⁶ *Nidamarti Nagabhushanam*, (1873)

7 M. H. C. 119, 120; *Smith*, (1925) 53 Cal. 333.

⁷ *Gaya Prasad*, (1928) 51 All. 465, followed in *Akbar Ali*, (1936) 12 Luck. 336.

Death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*, it is not enough that it may have been the *causa sine qua non*.¹ In a later case the same High Court has said that in cases falling under this section it is dangerous to attempt to distinguish between the approximate and ultimate cause of death.² Where a person using a road was accidentally killed in consequence of its being out of repair through neglect of trustees, appointed for the purpose of repairing the roads, to contract for repairing it, it was held that they were not chargeable with manslaughter.³ Where the accused, a motor driver, ran over and killed a woman but there was no rashness or negligence on the part of the driver so far as his use of the road or manner of driving was concerned, it was held that the accused could not be convicted under this section on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The "rash or negligent act" referred to in the section means the act which is the immediate cause of death and not any act or omission which can at most be said to be a remote cause of death.⁴ To render a person liable for neglect of duty there must be such a degree of culpability as to amount to gross negligence on his part. It is not every little trip or mistake that will make a man so liable.⁵

2. 'Not amounting to culpable homicide.'—"Section 304A is directed at offences outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge...enters. For the rash or negligent act which is declared to be a crime is one 'not amounting to culpable homicide,' and it must therefore be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. Section 304A does not say every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description."⁶

Contributory negligence.—The doctrine of contributory negligence does not apply to criminal liability, where the death of a person is caused partly by the negligence of the accused and partly by his own negligence. If the accused is charged with contributing to the death of the deceased by his negligence, it matters not whether he was deaf, or drunk, or negligent, or in part contributed to his own death.⁷

CASES.—Rash or negligent act.—Where a railway official, after being instructed to move some trucks down an incline uncoupled and singly, disobeyed the instruction and lost control over them, and a cooly in trying to stop the trucks fell under the wheels and was killed ;⁸ where an engine-driver failed to sound his whistle before starting the engine, and the engine having been put in motion caused a boy, who was painting a waggon on the line, injury, which resulted in his death ;⁹ where the accused cut out the piles of a person with an ordinary knife and from the profuse bleeding the person died ;¹⁰ where the accused struck at a man carrying a child

¹ *Omkar*, (1902) 4 Bom. L. R. 679. 770.

² *Khanmahomed*, (1936) 38 Bom. L. R. 1111.

³ *Porock*, (1851) 17 Q. B. 84.

⁴ *Akbar Ali*, (1936) 12 Luck. 336. 721.

⁵ *Finney*, (1874) 12 Cox 625; *Sal Narain Pandey*, (1932) 55 All. 263. 566.

⁶ *Idu Beg*, (1881) 3 All. 776, 778,

⁷ *Swindall*, (1846) 2 C. & K. 280.

⁸ *Nand Kishore*, (1884) 6 All. 248.

⁹ *Thompson*, (1894) Unrep. Cr. C.

¹⁰ *Sukaroo Kobiraj*, (1887) 14 Cal.

and the blow fell on the child and killed it ;¹ where the accused received poison from her paramour to administer to her husband as a charm and administered it with the result that death ensued, but she did not know that the substance given to her was noxious until she saw its effects ;² where the lessee of a ferry allowed an unsound boat to be used, and in consequence of its unsoundness, the boat sank while crossing the river and some of the persons in it were drowned ;³ where the accused sent two boxes for carriage upon a railway containing fireworks falsely declaring them to contain iron locks, with the result that in loading, one of the boxes exploded killing one cooly and injuring another and damaging the railway waggon in which it was being placed ;⁴ where the accused receiving a powder from an enemy of her relative took no precaution to ascertain whether it was noxious and mixed it with food believing that by so doing she would become rich but four of the persons who ate the food died ;⁵ and where the accused administered to her husband a deadly poison (arsenous oxide) believing it to be a love potion in order to stimulate his affection for her and the husband died,⁶ it was held in all those cases that the acts of the accused were either rash or negligent.

A compounder in order to make up a fever mixture took a bottle from a cupboard where non-poisonous medicines were kept and without reading the label of the bottle which was in its wrapper added its full contents to a mixture which was administered to eight persons out of whom seven died. The bottle was marked poison and contained strychnine hydrochloride and not quinine hydrochloride as he supposed. It was held that the compounder was guilty under this section.⁷

The accused, a girl of seventeen, who happened to be carrying her infant daughter tied on her back, having been exasperated at an altercation which she had with her husband, attempted to commit suicide by jumping into a well. She was found alive in the well next day but her child was drowned. The trial Judge convicted the accused of an attempt to commit suicide and also of the murder of her infant child, under ss. 309 and 302. It was held that the offence which the accused had committed was not murder, but causing death by negligent omission, i.e., omission to put the child down before jumping into the well.⁸ Where the accused, driving a motor-car at night, entered a road which being under repairs was closed to traffic and ran over and killed two coolies who were sleeping on the road with their bodies completely covered up except for their faces, it was held that, under the circumstances, the accused was not guilty of causing death by a rash and negligent act as it could not be said that he should have looked out for persons making such an abnormal use of the road.⁹ The accused was driving a lorry at the speed of about twenty miles an hour when he was passed on his right side by another lorry going fast, which went on to the *kacha* part of the road and raised a great cloud of dust which completely blinded the driver and hid the road from him. Instead of stopping he proceeded further with the result that as he could not see the road he drove his lorry on the right side of the road instead of the left and collided with another lorry whereby several persons were injured and received grievous hurt and one died. It was

¹ *Budhya*, (1888) Unrep. Cr. C. 398; but in *Sahae Rae*, (1878) 3 Cal. 623, such act was held to be grievous hurt.

² *Mussammal Bakhan*, (1887) P. R. No. 60 of 1887. In a somewhat similar case the Bombay High Court acquitted the accused of the offence of murder: *Nagawa*, (1902) 4 Bom. L. R. 425.

³ *Bhulan*, (1894) 16 All. 472.

⁴ *Kamr-ud-din*, (1905) P. R. No. 22 of 1905.

⁵ *Jamna*, (1909) 31 All. 290.

⁶ *Ramava*, (1915) 17 Bom. L. R. 217.

⁷ *De Souza*, (1920) 42 All. 272.

⁸ *Supadi*, (1925) 27 Bom. L. R. 604.

⁹ *Smith*, (1925) 58 Cal. 333.

held that the accused was guilty of a rash and negligent Act.¹ The accused who was driving an overloaded lorry was signalled by a police officer to stop, but he refused to do so and drove on at an excessive speed wishing to escape the chase of the police officer. During the chase a girl tried to cross the road and was knocked down and killed. It was held that the accused was guilty of an offence under this section.² The accused, an engine driver, was in charge of an engine and was doing the work of shunting. He drove his engine to a water column with the object of filling his tank with water. Beyond the water column, at a distance of eight or nine feet, was a tin shed in which engines needing repairs could be attended to. The accused's engine did not stop at the water column but went beyond it and collided with an engine which was undergoing repairs in the tin shed with such force that the engine was pushed along the line to a distance of forty or fifty yards and a fitter working under it was caught in the wheel and killed. It was held that it was the duty of the accused to approach the water column very slowly so that the engine might be stopped dead at the right spot, and as that was not done he had caused the death of the fitter by doing an act which was rash and negligent and was guilty of an offence under this section.³

Act, not rash or negligent.—Where the accused threw his stick at the deceased with such force that it hit the deceased on the head with the point, and made a punctured wound which caused the death of the deceased, it was held that he was not guilty of an offence under this section because the injury was intentionally caused to the deceased, but was guilty of causing hurt.⁴ The accused carrying a loaded gun stood quietly in a corner of a public place and was watching a dramatic performance. One of the actors, who was playing the part of a drunken dacoit, to enhance the effect of his acting approached the accused and grappled with him and in the course of the struggle the gun went off and the actor was killed. It was held that the accused was not guilty of a negligent act or causing death by a negligent act.⁵

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide
of child or insane person.

COMMENT.—This and the following section have been inserted because the ordinary law of abetment is inapplicable. They apply when suicide is in fact committed.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of suicide.

COMMENT.—Abetment of suicide is punishable under this section and attempt to commit suicide, under s. 309.

¹ *Abdul Qayyum*, [1940] Lah. 646.

² *Gurdev Singh*, [1948] Lah. 50.

³ *Chhotey Lal*, [1944] All. 674.

⁴ *Keegan*, (1893) Unrep. Cr. C. 673.

⁵ *Babu Ram*, [1942] All. 884.

Abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide; when another person, at the request of or with the consent of the suicider, has killed that person, he is guilty of homicide by consent, which is one of the forms of culpable homicide. Persons actually assisting a Hindu widow in becoming *sati* (self-immolation in the same pyre with the dead body of her husband) are guilty of suicide or abetment thereof.¹ The abettors cannot defend themselves on the ground that they expected a miracle and did not anticipate that the pyre would be ignited by human agency.²

307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

ILLUSTRATIONS.

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A with the intention of causing the death of a child of tender years exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

COMMENT.—This and the following section seem to apply to attempts to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although it does not cause death, is carried to such a length as, at the time of carrying it to that length, the offender considers sufficient to cause death.³ It is sufficient if the act was one capable of causing death and there was an intention to cause death. The administration of powdered glass in food is an offence under this section.⁴

¹ *Ram Dayal*, (1913) 36 All. 26.

Unrep. Cr. C. 964.

² *Vidyasagar Pandey*, (1928) 8 Pat. 74.

³ *Gangon*, [1942] Nag. 123.

⁴ *M. & M. 274; Rawal Arab*, (1898)

Attempt.—Attempt is an intentional preparatory action which fails in object—which so fails through circumstances independent of the person who seeks its accomplishment.¹

Whether act committed must be capable of causing death.—According to the Bombay High Court the act committed by the accused must be an act capable of causing death in the natural and ordinary course of things ; and if the act complained of is not of that description, the accused cannot be convicted under this section.² Where, therefore, the accused presented as uncapped gun at his superior officer (believing the gun to be capped) with the intention of murdering him but his rifle was pushed up, and he was prevented from pulling the trigger, it was held that he was guilty not under this section but under s. 511.³ The Court observed : “That may be an attempt under s. 511 which does not come within s. 307”; and “s. 307 was not intended to exhaust all attempts to commit murder which should be punishable under the Code.” This decision is doubted in a subsequent case in which Beaumont, C. J., observed that the words “under such circumstances ” in this section have not such a wide meaning as was given to them in *Reg. v. Cassidy*. Those words, in my opinion, refer to facts which would introduce a defence to a charge of murder, such as, for instance, that the accused was acting in self-defence or in the course of military duty.” To support a conviction under this section the accused should have done the act with such a guilty intention and knowledge and in such circumstances that but for some intervening fact the act would have amounted to murder in the normal course of events.⁴ In this case the accused fired two shots from a revolver at point blank range at an acting Governor of Bombay, but the bullets failed to take effect owing either to some defect in the ammunition or to the intervention of a leather wallet and currency notes in his pocket. It was held that the accused was guilty of an offence under this section. The Allahabad High Court has also held, differing from *Cassidy's* case, that s. 511 does not apply to attempts to commit murder which are fully and exclusively provided for by s. 307.⁵ Where, therefore, the accused pointed a loaded pistol at a person to shoot him and pulled the trigger, and the cap exploded but the charge did not go off, it convicted the accused under this section. It observed that “a person criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.”⁶ The Lahore High Court, differing from the Bombay High Court, has held that it is not necessary that the injury inflicted should in itself be sufficient in the ordinary course of nature to cause death, and that this section will apply even if no hurt is caused. The causing of hurt is merely an aggravating circumstance.⁷ The accused in this case was in love with a young and attractive girl but she married another man. The accused was bent upon having her but she did not agree. While she had been to her parents' house the accused went there

¹ *Luzman*, (1899) 2 Bom. L. R. murder.
286.

² *Francis Cassidy*, (1867) 4 B. H. C. 17, 21; *Martu*, (1913) 15 Bom. L. R. 991, 993. In *Martu's* case the accused struck his wife on her neck with an axe causing an incised wound, and it was held that he was guilty of voluntarily causing simple hurt by a dangerous weapon (s. 324) and not of attempt to

³ *Francis Cassidy*, (1867) 4 B. H. C. 17, 24, 25.

⁴ *Vasudeo Gogle*, (1932) 34 Bom. L. R. 571, 58 Bom. 434.

⁵ *Niddha*, (1891) 14 All. 38.

⁶ *Ibid.*

⁷ *Ghulam Qadir*, (1936) 18 Lah. 111.

and inflicted severe wounds on her neck and jaw, but she survived. It was held that the accused was guilty of attempt to murder. The Court observed: "All that is necessary to be established is the intention with which the act is done and if once that intention is established the nature of the act will be immaterial." The Nagpur High Court, differing from *Cassidy's* case, has held that for the purpose of this section what is material is the intention or knowledge, not the consequences of the actual act done for the purpose of carrying out the intention. An offence under this section can be committed when there is no intention proved but only *knowledge*, that the act is so imminently dangerous that it must be likely to cause death. In this case a bullock cart driver was persistently molested by the accused while he was proceeding on a road. The driver appealed to a police constable on duty for help. The police constable demanded the accused's name but he refused to give it. The police constable caught hold of his right hand and led him to a police station. On the way the accused whipped out a knife from his waist and with a sharp sweep of his left hand dealt a blow on the chest of the constable. As his hold was relaxed he set himself free and effected his escape. It was held that the accused was not guilty under this section, but under s. 324, for causing hurt with a dangerous weapon, and under s. 332 for causing hurt to a public servant with intent to prevent him from discharging his duty.¹

CASES.—Death not resulting from act of accused but through other causes.—Where a child wrapped up in a quilt was abandoned in a thicket close to a house and footpath, and was found very shortly after its exposure, the child having died not from exposure but from the ignorance of the person who found it and who gave it no food;² and where a man struck another on the head with a stick,³ and believing him to be dead set fire to the hut with a view to remove all evidence of the crime, and the Civil Surgeon deposed that the blow only stunned the deceased, and the death was really caused by the injuries from the burning. When the accused set fire to the hut,⁴ it was held that he was guilty of attempt to murder. The Madras High Court is of opinion that the last case is wrongly decided and that the accused in that case should have been held guilty of murder, because if the intention is to kill and the killing results, the accused succeed in doing that which they intended to do and, if the acts follow closely upon one another and are intimately connected with one another, then the offence of murder has been committed. In this case the accused, who had formed a deliberate plan to kill a woman and who had intended to kill her, decoyed her under pretence of taking her to a sick relation. On the way they had a struggle with the woman. She was dragged either in an unconscious or semi-conscious condition on to a railway line, her body was put across the railway line, in such a way that her neck lay across the rails, and she was killed by a passing train. The accused did not put forward the case that they believed the woman to be dead when they put her body across the railway line. It was held that the accused were guilty of murder.⁵ The Patna High Court has held that where there is from the very beginning a clear intention to cause death, the offence is one of murder even if death results from a series of closely connected acts held at more than one stage. The mere fact that the earlier assault did not result in death and that the accused was killed by a passing train where she had been placed by the accused would make no difference.⁶

¹ *Provincial Government, Central Provinces and Berar v. Abdul Raheman*, [1943] Nag. 411.

² *Khodabux Fakeer*, (1868) 10 W. R. (Cr.) 52.

³ *Khandu*, (1890) 15 Bom. 194.

⁴ *Kaliappa Goundan*, (1933) 57 Mad. 158.

⁵ *Lingraj Das*, (1945) 24 Pat. 131.

Poison.—Where the accused intentionally put arsenic into her husband's food in order to kill him, and the husband died some time afterwards from the inflammation of the brain, and there was no evidence that the poison was even a secondary cause of the deceased's death;¹ and where the accused asked a doctor to supply her with medicine for the purpose of poisoning her son-in-law,² it was held that there was no attempt to murder.

Where a woman administered *dhatura* (a poisonous herb) to three members of her family, who did not die, it was held that she was guilty of attempt to murder as she must be presumed to have known that the administration of *dhatura* was likely to cause death, although she might not have administered it with that intention.³ Where sweetmeats containing arsenic sent to A with the intention of causing her death were also shared by B and C and none of them died, it was held that the accused was guilty of attempt to murder not only A, but also B and C.⁴

Attempt to discharge loaded firearm.—Where a man accustomed to shooting fired at a person at a distance of six paces, it was held that he must have known that his act was likely to cause death. The fact that the back of the chair on which the victim was seated intercepted a number of bullets, and thus avoided a fatal result, was held not to reduce the offence from one under this section to one under s. 324. For, if the person shot at had died, the accused would have been guilty of murder.⁵

308. Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term, which may extend to seven years, or with fine, or with both.

ILLUSTRATION.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section. ~~~

COMMENT.—The wording of this section is the same as that of the preceding one except that it deals with an attempt to commit culpable homicide. The punishment provided is therefore not so severe.

309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. ~

COMMENT.—The act done must be in the course of the attempt, otherwise no offence is committed. Where a woman with the intention of committing suicide by throwing herself in a well, actually ran towards it, when she was seized by a

¹ *Venkatasami*, (1882) Weir, 3rd Edn., 187.

² *Musst. Bakhtawar*, (1882) P. R. No. 24 of 1882.

³ *Tulsha*, (1897) 29 All. 148.

⁴ *Ladha Singh*, (1920) 8 L. L. J. 191.

⁵ *Abdul Rahman*, (1908) 9 C. L. J. 482.

person, it was held that she might have changed her mind, and she was caught before she did anything which might have been regarded as the commencement of the offence.¹ Her act simply amounted to *preparation*. The pounding of oleander roots with an intention to poison one's self with the same was held not to constitute this offence.² Where the accused jumped into a well to avoid escape from police, and when rescued he came out of the well of his own accord, it was held that, in the absence of evidence that he jumped into the well to commit suicide, he could not be convicted of that offence.³ A village woman of twenty was ill-treated by her husband. There was a quarrel between the two, and the husband threatened that he would beat her. Late that night the woman, taking her six months old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband was pursuing her she got into a panic and jumped down a well nearby with the baby in her arms. The result was that the baby died but the woman recovered. One of the charges against her was attempt to commit suicide. It was held that she could not be convicted under this section of an attempt to commit suicide, for the word "attempt" connotes some conscious endeavour to accomplish the act, and the accused in jumping down the well was not thinking at all of taking her own life but only of escaping from her husband.⁴

310. Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.

COMMENT.—This and the following section incorporate the provisions of the Thuggee Act of 1836.

311. Whoever is a thug, shall be punished with transportation for life, and shall also be liable to fine.

COMMENT.—Gangs of persons habitually associated for the purpose of inveighing and murdering travellers or others in order to take their property, etc., are called thugs. Thugs are robbers and dacoits, but robbers and dacoits are not thugs. Thugs committed robbery or dacoity or kidnapping always accompanied with murder. Killing of the victim was the essential thing. Thugs have disappeared from the country altogether.

Of the Causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.

312. Whoever voluntarily causes a woman with child¹ to miscarry, shall, if such miscarriage² be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child,³ shall be punished with imprisonment of either

¹ *Ramakka*, (1884) 8 Mad. 5.

L. R. 146.

² *Tayee*, (1888) Unrep. Cr. C. 188.

⁴ *Dhirajia*, [1940] All. 647.

³ *Dwarka Poonja*, (1912) 14 Bom.

description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

COMMENT.—This section deals with the causing of miscarriage with the consent of the woman, while the next section deals with the causing of miscarriage without such consent.

1. 'With child' means pregnant, and it is not necessary to show that 'quickening,' that is, perception by the mother of the movements of the foetus, has taken place or that the embryo has assumed a foetal form, the stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial. Where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called foetus or child, it was held that the acquittal was bad in law.¹

2. 'Miscarriage' is the premature expulsion of the child or foetus from the mother's womb at any period of pregnancy before the term of gestation is completed.

3. 'Quick with child.'—Quickening is the name applied to peculiar sensations experienced by a woman about the fourth or fifth month of pregnancy.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing miscarriage without woman's consent.

COMMENT.—Under this section the act should have been done without the consent of the woman. Under it the person procuring the abortion is alone punished. Under s. 312 such person as well as the woman who causes herself to miscarry are both punished.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

Death caused by act done with intent to cause miscarriage.

and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

If act done without woman's consent.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

COMMENT.—This section provides for the case where death occurs in causing miscarriage. The act of the accused must have been done with intent to cause the miscarriage of a woman with child.

¹ *Ademma*, (1886) 9 Mad. 369.

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

COMMENT.—Any act done with the intention here mentioned which results in the destruction of the child's life, whether before or after its birth, is made punishable.

316. Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

COMMENT.—This section punishes offences against children in the womb where the pregnancy has advanced beyond the stage of quickening and where the death is caused after the quickening and before the birth of the child. Any act or omission of such a nature and done under such circumstances as would amount to the offence of culpable homicide, if the sufferer were a living person, will, if done to a quick unborn child whose death is caused by it, constitute the offence here punished.

The principle laid down in s. 301 is again applied here.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose¹ or leave² such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

COMMENT.—This section is intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or

being injured. It does not apply when children are left under the care of others.¹ It applies where a child is exposed and no death supervenes; if, however, death follows, the conviction must be under s. 304.² The offence is complete notwithstanding that no actual danger or risk of danger arises to the child's life.

Ingredients.—The section requires three essentials—

(1) The person coming within its purview must be father or mother or must have the care of the child.

(2) Such child must be under the age of twelve years.

(3) The child must have been exposed or left in any place with the intention of wholly abandoning it.

1. 'Expose.'—'Expose' means to physically put outside, so that such putting outside involves some physical risk to the person put out. Having reference to a child, it would mean putting it somewhere where it could not receive the protection necessary for its tender age; as, for instance, putting it outside the house, whereby it would be exposed to the risk of climate, wild beasts and the like. The exposure contemplated by the Code is only by which danger to life may immediately ensue. A woman, mother of an illegitimate child, six months old, left it in charge of a blind woman saying she would soon return. She went away to another village and did not return; and apparently she never intended to return. It was held that she could not be convicted under this section.³

2. 'Leave.'—In order to make the 'leaving' of a child an offence, the child must be left without protection.⁴

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Concealment of birth
by secret disposal of
dead body.

COMMENT.—This section is intended to prevent infanticide. It is directed against concealment of birth of a child by secretly disposing of its body.

Ingredients.—The section requires—

(1) Secret burying or otherwise disposing of the dead body of a child.

(2) It is immaterial whether such child die before or after its birth.

(3) Intention to conceal the birth of such child by such secret burying or disposal.

This section deals with the secret burial of a child. It applies only where one intentionally conceals the birth of a child from the world at large. As disclosure to a confidant does not take the case out of this section, so mere omission to publish the fact of the birth or concealment from a desire to escape individual observation or anger does not attract it.⁵ It is sufficient to show that a 'child' was born and that it was sufficiently developed to have lived if born alive.⁶ If it is a *fœtus* only then ss. 312 and 511 of the Code will apply.

¹ *Felani Hariani*, (1871) 16 W. R. (Cr.) 12; *Mussumat Khairo*, (1872) P. R. No. 83 of 1872; *Mussumat Bhagan*, (1878) P. R. No. 4 of 1879.

² *Banni*, (1879) 2 All. 340.

³ *Mirchia*, (1896) 18 All. 364.

⁴ *Must. Bhuran*, (1877) P. R. No. 5 of 1878.

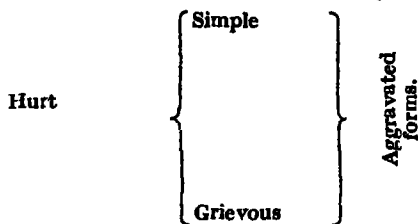
⁵ *Shailabala Dasee*, (1935) 62 Cal. 1127.

⁶ *Radha*, (1899) 1 Bom. L. R. 155.

The offence becomes complete when the birth, *i.e.*, the delivery of a child, dead or living, is concealed by any means.¹

Where the accused gave her new-born illegitimate dead child to a woman with instructions to dispose of it secretly, and the latter carried out the instructions by throwing it into a river, it was held that the accused was not guilty of a substantive offence under this section, though the facts more appropriately came under the definition of abetment.²

Of Hurt.



1. By dangerous weapons.
2. To extort property or to constrain to illegal act.
3. By means of poison to commit offence.
4. To extort confession, or to compel restoration of property.
5. To deter public servant from his duty.

Hurt.

319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

COMMENT.—The authors of the Code say: "Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt; but they cannot, without extreme violence to language, be said to have committed assaults. We propose to designate all pain, disease and infirmity by the name of hurt."³

The definition of hurt appears to contemplate the causing of pain, etc., by one person to another. Pulling a woman by the hair was held to be this offence.⁴

Act neither intended nor likely to cause death is hurt even though death is caused.—Where there is no intention to cause death or no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of hurt only if the injury caused was not serious. Where the accused with a view to chastising her daughter, eight or ten years old, for impertinence, gave her a kick on the back and two slaps on the face, the result of which was death,⁵ it was held that she was guilty of voluntarily causing hurt.

Spleen.—Where death ensued in consequence of a rupture of a diseased spleen, s. 321 was held to apply.⁶ Where a wife died from a chance kick in the spleen, not known to be diseased, inflicted by her husband on provocation, and the husband had no intention or knowledge that the act was likely to cause hurt endangering human life, it was held that he was guilty of hurt only.⁷ Where the accused kicked

¹ Lalbu, (1898) Unrep. Cr. C. 961.

² Baji, (1895) Unrep. Cr. C. 775.

³ Note M, p. 151.

⁴ (1888) Weir, 3rd Edn., 196.

⁵ Beahor Bewa, (1872) 18 W. R. (Cr.)

29.

⁶ Bawaji, (1872) Unrep. Cr. C. 63.

⁷ Bysagoo Neshyo, (1867) 8 W. R. (Cr.) 29.

a punkha-puller who had an enlarged spleen which was not known to the accused, and death ensued, it was held that he was guilty of causing hurt.¹ Where the accused had caused the death of another person by throwing a piece of brick at him which struck him in the region of the spleen and ruptured it, the spleen being diseased, it was held that, as the accused had not the intention to cause death or such bodily injury as was likely to cause death, he was guilty of voluntarily causing hurt.²

Poisoned sweetmeats.—A boy of about sixteen years of age, being in love with a girl some three or four years younger, and apparently intending to administer to her something in the nature of a love philtre, induced another boy younger than himself to give the girl some sweetmeats. The girl and some of the other members of her family ate the sweetmeats and all the persons who partook of them were seized with more or less violent symptoms of *dhatūra* poisoning, though none of them died. It was held that the boy was guilty of causing hurt.³

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous";—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

COMMENT.—Grievous hurt is hurt of a more serious kind. This section merely gives the description of grievous hurt.

The authors of the Code observe: "We have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible; but it is far better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, should be classed together."⁴

To make out the offence of voluntarily causing grievous hurt, there must be some specific hurt, voluntarily inflicted, and coming within any of the eight kinds enumerated in this section.

Clause 1.—'Emasculation' means depriving a person of masculine vigour.

Clause 6.—'Disfiguration' means doing a man some external injury which detracts from his personal appearance but does not weaken him, as the cutting of a man's nose or ears. Where a girl's cheeks were branded with a red-hot iron which left scars of a permanent character, it was held that the disfigurement contemplated by this section was caused.⁵

¹ Fox, (1879) 2 All. 522.

² Randhir Singh, (1881) 3 All. 597.

³ Anis Beg, (1923) 46 All. 77.

⁴ Note M, p. 151.

⁵ Anta Dadoba, (1868) 1 B. H. C. 101.

Clause 7.—Fracture or dislocation of a bone or tooth causes great pain and suffering to the injured person and hence it is considered grievous hurt. Where the accused threw his wife from a window about six feet high, but the fall was broken by a weather-board fixed just below it and resulted in the fracture of kneecap and in several small wounds, it was held that he was guilty of causing grievous hurt.¹

Clause 8.—This clause speaks of two things: (1) any hurt which endangers life and (2) any hurt which causes the sufferer to be during the space of twenty days (a) in severe bodily pain, or (b) unable to follow his ordinary pursuits.

The line between culpable homicide not amounting to murder and grievous hurt is a very thin line. In the one case the injuries must be such as are likely to cause death; in the other, the injuries must be such as to endanger life.²

The mere fact that a man has been in hospital for twenty days is not sufficient, it must be proved that during the time he was unable to follow his ordinary pursuits.³ Where a man was so much injured that he had to go to a hospital but left it perfectly cured on the twentieth day, it was held that that day would count as one of the twenty days during which he was unable to follow his ordinary pursuits;⁴ and where the accused caused hurt to a woman who remained in a hospital only for seventeen days, out of which she was in danger for three days, it was held that he had caused grievous hurt.⁵ A disability for twenty days constitutes grievous hurt: if it continues for a smaller period, then the offence is hurt.⁶

Acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.—Where there is no intention to cause death or no knowledge that death is likely to be caused from the harm inflicted, and death is caused, the accused would be guilty of grievous hurt if the injury caused was of a serious nature, but not of culpable homicide. Where the only intention of the accused who was convicted for the offence of murder was to steal the jewels of the deceased and the only violence which he committed, viz., cutting the nostrils of the deceased, was necessary in order to facilitate the theft and the death of the deceased was entirely unexpected, it was held that the accused was not guilty of murder but causing grievous hurt under s. 325.⁷

Spleen.—Where the accused, pulling the deceased out of a cot, kicked him, and struck him on the side or on the ribs with a stick, whereby the deceased, whose spleen was diseased, died, it was held that he was guilty of voluntarily causing grievous hurt.⁸

Blow aimed at one person falling upon another—The accused struck a woman, carrying an infant in her arms, violently over her head and shoulders. One of the blows fell on the child's head causing death. It was held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.⁹ In the course of an altercation between the accused and the complainant on a dark night, the former aimed a blow with his stick at the head of the latter. To ward off the blow, the complainant's wife, who had a child on her arm, intervened between them. The

¹ *Jiva*, (1891) Unrep., Cr. C. 558.

² *Government of Bombay v. Abdul Wahab*, (1943) 47 Bom. L. R. 998, F.B.

³ *Vasta Chela*, (1894) 19 Bom. 247.

⁴ *Sheikh Bahadur*, (1862) 2nd Mad. Ses.

⁵ *Bassoo Rannah*, (1865) 2 W. R.

(Cr.) 29.

⁶ *Bishnooram Surma*, (1864) 1 W. R. (Cr.) 9.

⁷ *Gurupulu*, [1945] Mad. 73.

⁸ *O'Brien*, (1880) 2 All. 766; *Idu Brg.*, (1881) 3 All. 776.

⁹ *Sahae Rae*, (1878) 3 Cal. 623.

blow missed its aim, but fell on the head of the child causing severe injuries, from the effects of which it died. It was held that the accused was guilty of simple hurt only.¹ The accused had the intention of causing hurt to a person but not grievous hurt and the nature of the blow, taken with reference to the person against whom it was aimed, cannot be taken to indicate the necessary intention or knowledge as to causing grievous hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

ILLUSTRATION.

A, intending and knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

323. Whoever, except in the case provided for by section 384, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—This is a general section for the punishment of voluntarily causing hurt. Sections 324, 327, 328, 329 and 330 deal with the same offence done under certain aggravated circumstances; and ss. 384, 386 and 387 provided for punishment when there are certain mitigating circumstances.

A prosecution under this section does not abate by reason of the death of the person injured.²

324. Whoever, except in the case provided for by section 384, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance,

¹ *Chatur Natha*, (1919) 21 Bom. L. R. 1101.

² *Muhammad Ibrahim v. Shah Dawood*, (1920) 44 Mad. 417.

or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—This section makes simple hurt more grave, and liable to more severe punishment where it has the differentia of one of the modes of infliction described in the section.

325. Whoever, except in the case provided for by section 385, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

326. Whoever, except in the case provided for by section 385, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

COMMENT.—The relationship between this section and the preceding one is the same as that between ss. 324 and 323.

327. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property, or to constrain to an illegal act.

COMMENT.—This is an aggravated form of the offence of hurt and is severely punishable, because the object of causing it is to extort property from the sufferer.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or

Causing hurt by means of poison, etc., with intent to commit an offence.

to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—The offence under this section is complete even if no hurt is caused to the person to whom the poison or any other stupefying, intoxicating, or unwholesome drug is administered. This section is merely an extension of the provisions of s. 324. Under s. 324 actual causing of hurt is essential; under this section mere administration of poison is sufficient to bring the offender to justice.

Mere procuring or supplying a poisonous drug at the instigation of a person who wishes to take it is not administering it.

CASES.—**Administering unwholesome drug.**—Where a man administered the juice of some leaves to some villagers by way of ordeal and some of them showed symptoms of poison,¹ where the accused administered powder of *dhatūra* to a woman and robbed her of her jewellery while she was senseless,² and where a wife, not knowing the dangerous properties of aconite, administered it to her husband by mixing it with his food and he died,³ it was held that an offence under this section was committed.

Causing unwholesome thing to be taken.—Where the accused mixed milk-bush juice in his toddy pots, knowing that if drunk by a person it would cause injury, with the intention of detecting an unknown thief who was always in the habit of stealing his toddy, and the toddy was drunk by some soldiers who purchased it from an unknown vendor, it was held that he was guilty under this section.⁴

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—This section is similar to s. 327, the only difference being that the hurt caused under it is grievous.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restora-

¹ *Dusi Pitchigadu*, (1883) 1 Weir 385.

² *Hanumakka*, [1943] Mad. 679.

⁴ *Dhania Daji*, (1868) 5 B. H. C.

³ *Nanjundappa*, Weir, 3rd Edn., (Cr. C.) 59. 197.

tion of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

ILLUSTRATIONS.

(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

COMMENT.—This section is similar to s. 327 which deals with causing of hurt for the purpose of extorting property or valuable security. It punishes the inducing of a person by causing hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.¹ The principal object of the section is to prevent torture by the police. Where a constable during an inquiry into a theft case, violently beat the deceased, who died about nine days afterwards from the effect of the beating, it was held that he was guilty under this section.²

Abetment.—Where the accused stood by and acquiesced in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, it was held that he abetted the offence under this section.³

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—This section is similar to the preceding section except that the hurt caused under it should be 'grievous.'

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

Voluntarily causing hurt to deter public servant from his duty.

¹ *Nim Chand Mookerjee*, (1873) 20 No. 86 of 1866.
W. R. (Cr.) 41.

² *Meeah Mahomed*, (1866) P. R. *Dinanath*, [1940] Nag. 232.

³ *Lutifkhan*, (1895) 20 Bom. 394;

done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—The protection given by this section is not confined to public servants, but will also extend to persons acting in good faith by their directions. This section resembles s. 353. Under it there is causing of hurt to the public servant, under s. 353 there is assault or criminal force for the same purpose.

The expression 'in the discharge of his duty as such public servant' means in the discharge of a duty imposed by law on such public servant in the particular case, and does not cover an act done by him in good faith under colour of his office.¹ Suppose a warrant is handed to a police-officer for the arrest of a particular person. That warrant on the face of it does not direct him to break open premises, in order to effect the arrest, and yet it may be necessary for the officer in discharge of his duty in arresting the accused under the warrant to break into the accused's house, or to do some other act without the doing of which the warrant could not be executed. Such acts would be properly described as done or attempted to be done by the police-officer in the lawful discharge of his duty. If it was unnecessary to do such an act, and yet it was done, the act would not be done by the police-officer in the lawful discharge of his duty, and therefore would not be covered by the concluding portion of this section.²

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to deter public servant from his duty.

COMMENT.—This section provides for the aggravated form of the offence dealt with in the last section. The hurt caused under it must be grievous.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing hurt on provocation.

COMMENT.—The section serves as a proviso to ss. 323 and 324. See Comment on Exception 1 to s. 300.

¹ *Dalip*, (1896) 18 All. 246.

² Per Edge, C. J., in *Dalip*, (1896) 18 All. 246, 250, 251.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

COMMENT.—This section serves as a proviso to ss. 325 and 326.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

COMMENT.—Rash and negligent acts which endanger human life, or the personal safety of others, are punishable under this section even though no harm follows, and are additionally punishable under ss. 337 and 338 if they cause hurt, or grievous hurt.

Many specific acts of rashness or negligence likely to endanger life or to cause hurt or injury are made punishable by Chapter XIV.

Section 279 punishes rash driving or riding ; s. 280, rash navigation of a vessel ; s. 284, rash or negligent conduct with respect to poisonous substance ; s. 285, rash or negligent conduct with respect to any fire or combustible matter ; s. 286, rash or negligent conduct with respect to any explosive substance ; s. 287, negligent conduct with respect to any machinery in the possession of the accused ; s. 288, negligence with respect to pulling down or repairing buildings ; s. 289, negligence with respect to animals ; s. 304A, rash or negligent act causing death ; s. 330, any rash or negligent act endangering life or personal safety of others ; s. 337, rash or negligent act causing hurt ; and s. 338, rash or negligent act causing grievous hurt.

CASE.—Where a priest of a temple left the temple at night and from outside deliberately threw bricks at it, hoping that the Hindus of the locality would believe that the bricks came from the Mahomedan quarter and that this would lead to a riot between the two communities, it was held that the act was a deliberate one and not a rash or negligent act.¹

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

¹ *Gaya Prasad*, (1928) 51 All. 465.

COMMENT.—Section 304A deals with those cases where death is caused by a rash or negligent act; this section, where hurt is caused.

This section applies only to acts done rashly or negligently but without any criminal intent.

CASES.—**Negligence with reference to gun.**—The causing of hurt by negligence in the use of a gun was held to fall within the purview of this section rather than of s. 286. But where all the evidence against the accused was that he went out shooting when people were likely to be in fields and that a single pellet from his gun struck a man who was sitting in a field, it was held that this was not sufficient evidence of rashness or negligence to support a conviction under this section.¹

Negligent operation.—A *hakim* (native physician) performed an operation of the eye with an ordinary pair of scissors and sutured the wound with an ordinary thread and needle. The instruments used were not disinfected and the complainant's eyesight was permanently damaged. It was held that the *hakim* had acted rashly and negligently, and was guilty under this section, as there was no permanent privation of the sight of the eye.²

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—The last section provided for 'hurt,' this section provides for 'grievous hurt' caused under similar circumstances.

CASES.—**Sexual intercourse causing injury.**—A husband has not the absolute right to enjoy the person of his wife without regard to the question of safety to her. Hence, where a husband had sexual intercourse with his wife, aged eleven years, and she died from the injuries thereof, it was held that he was guilty of causing grievous hurt by doing a rash act under this section.³ Clause (d) of s. 375 will now make the husband guilty of rape also.

Running over by carriage.—Where a person, by allowing his cart to proceed unattended along a road, ran over a boy who was sleeping on the road, it was held that he had committed an offence under s. 337 or s. 338.⁴

Of Wrongful Restraint and Wrongful Confinement.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

¹ *Abdus Sattar*, (1906) 28 All. 464.

³ *Hurree Mohun Mythee*, (1890)

² *Ghulam Hyder Panjabi*, (1915) 17 Bom. L. R. 384, 30 Bom. 523.

18 Cal. 49.

⁴ *Malkaji*, (1864) Unrep. Cr. C. 198.

ILLUSTRATION.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

COMMENT.—Wrongful restraint means the keeping a man out of a place where he wishes to be, and has a right to be.¹ The slightest unlawful obstruction to the liberty of the subject to go, when and where he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable under this section.²

Ingredients.—The section requires—

- (1) Voluntary obstruction of a person. ✓
- (2) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.

The following illustrations, given in the original Draft Code,³ further elucidate the meaning of this section:—

(a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.

(b) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which Z has a right to pass. A wrongfully restrains Z.

(c) A threatens to set a savage dog at Z, if Z goes along a path along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.

(d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage, and thereby prevents Z from going along the path, A wrongfully restrains Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other impossible, difficult or dangerous to proceed, as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed. Where the complainant and his wife and daughter occupied a house, and during their temporary absence the accused put a lock on the outer door and thereby obstructed them from getting into the house, it was held that the accused was guilty of wrongful restraint.⁴

All members of the public have equal rights in public streets vested in a municipality, and one section of the community cannot interdict another section of the community from the lawful use of public streets.⁵

CASES.—**Wrongful restraint.**—Where the accused removed a ladder and thereby detained a person on the roof of a house,⁶ where the accused prevented the complainant from proceeding in a certain direction with their carts,⁷ where a landlord prevented a tenant of his, who was holding over, from entering the room which the tenant had rented from him,⁸ and where the accused, who were co-owners of a well, obstructed another co-owner (complainant) from using the well, on the ground that he had not paid his share of expenses incurred on the well,⁹ it was held

¹ Note M, p. 154.

² *Saminada Pillai*, (1882) 1 Weir 339.

³ Page 59.

⁴ *Arumuga Nadar*, [1910] M. W. N. 727.

⁵ *Sundarennara Srauthigal*, (1927) 50 Mad. 673.

⁶ *Talapolu Subbadu*, (1884) 1 Weir 340.

⁷ *Jowahir Shah v. Gridharee Chowdhry*, (1868) 10 W. R. 35.

⁸ *Haji Gulam Mahomed*, (1918) 21 Bom. L. R. 261.

⁹ *Lahanu*, (1925) 27 Bom. L. R. 1419.

that this offence was committed. Where the accused caused obstruction to a vehicle in which persons were travelling, it was held that it amounted to wrongful restraint.¹ The Bombay High Court has held in a previous case that this does not amount to wrongful restraint if the persons sitting in the vehicle can get down and walk without being obstructed.²

No wrongful restraint.—Where the accused placed an obstruction in a road over which the complainant had a right of passage for men and cattle, thereby preventing cattle from passing but leaving a portion of the way in such a condition as to be passable by human beings,³ where A invited B to his house in order to be ready to give evidence in a judicial proceeding, and A used no physical coercion nor threat of any kind to detain B in the house, but B from a mere general dislike or dread of giving offence to A remained there;⁴ and where the accused caused low class people to stand in a public street in the vicinity of a temple with the object of preventing the complainant from conducting a religious procession, from fear of pollution,⁵ it was held that this offence was not committed. The accused, one of the two joint-owners of a shop, put her lock on the shop which was let out by the other joint-owner without her consent. The tenant charged the accused with the offence of wrongful restraint in that he was prevented by the lock from entering into the shop. It was held that the accused had committed no offence inasmuch as she had affixed her lock to a house of which she was the joint-owner and the complainant was no tenant of hers.⁶ The accused, while the complainant was absent, put up a tin projection over the complainant's compound wall, so as to hang over his paved court-yard. The complainant having prosecuted the accused for the offence of wrongful restraint, it was held that the accused had committed no offence, since the projection did not prevent any one moving below it; and that its possible obstruction to the complainant in whitewashing or repairing the wall was not tantamount to wrongful restraint contemplated by this section.⁷

340. Whoever 'wrongfully restrains any person in such a manner as to prevent that person from proceeding¹ beyond certain circumscribing limits,² is said "wrongfully to confine" that person.

Wrongful confinement.

ILLUSTRATIONS.

(a) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

COMMENT.—Wrongful confinement which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go.³ There must be a total restraint, not a partial one. If one man merely obstructs the passage of another in a particular direction, whether by threat of personal violence or otherwise, leaving him at liberty to stay where he is or to go in any other direction if he pleases, he cannot be said thereby to imprison him.

¹ *Gopala Reddi v. Lakshmi Reddi*, [1947] Mad. 555.

² *Rama Lala*, (1912) 15 Bom. L. R. 108.

³ (1899) 1 Weir 340.

Lakshman Kalyan, (1875) Unrep. Cr. C. 89.

⁴ *Venkata Subba Reddy*, (1910) M. W. N. 72.

⁵ *Bai Samrath*, (1917) 20 Bom. L. R. 106.

⁶ *Chhagan Vithal*, (1927) 29 Bom. L. R. 494.

⁷ Note M, p. 154.

Imprisonment is a total restraint of the liberty of the person, for however short a time, and not a partial obstruction of his will, whatever inconvenience it may bring on him.¹

Ingredients.—The section requires—

(1) Wrongful restraint of a person.

(2) Such restraint must prevent that person from proceeding beyond certain circumscribing limits.

1. 'Prevent that person from proceeding.'—The retaining of a person in a particular place or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of him who exercises that exterior will.² There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected.³

2. 'Certain circumscribing limits.'—“A prison may have its boundary large or narrow, visible and tangible, or, though real, still in the conception only; it may itself be movable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own.”⁴

Moral force.—Detention through the exercise of moral force, without the accompaniment of physical force or actual conflict, is sufficient to constitute this offence.⁵

Period of confinement.—The time during which a person is kept in wrongful confinement is immaterial, except with reference to the extent of punishment.⁶

CASES.—Wrongful confinement.—Where a police-officer arrested without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India;⁷ where a jail doctor confined an offender, who was already undergoing imprisonment, in a cell within the jail for the purpose of administering enema against his will;⁸ where an Abkari Inspector detained a man all night to prevent his being tampered with;⁹ where a police constable detained some persons as suspects for several days;¹⁰ and where a person living in a town where medical assistance was available kept in chains his brother who was subject to insanity of an intermittent kind,¹¹ this offence was held to have been committed. Where two police-officers arrested without warrant a person who was drunk and creating disturbance in a public street, and confined

¹ *Bird v. Jones*, (1843) 7 Q. B. 742, 751-52.

² *Parankusam v. Stuart*, (1865) 2 M. H. C. 896; *S. A. Hamid v. Sudhir-mohan Ghosh*, (1929) 57 Cal. 102.

³ *Muhammad Din*, (1893) P. R. No. 36 of 1894.

⁴ *Per Coleridge, J.*, in *Bird v. Jones*, (1845) 7 Q. B. 742, 744.

⁵ *Venkatachala Mudali*, (1881) 1 Weir 84.

⁶ *Suprosunno Ghosaul*, (1866) 6 W. R. (Cr.) 88.

⁷ *Mukund Babu Veth*, (1894) 19 Bom. 72.

⁸ *Baistab Charan Shaha*, (1902) 20 Cal. 95.

⁹ *Dhanra v. F. L. Clifford*, (1883) 13 Bom. 376.

¹⁰ *Shamlal*, (1902) 4 Bom. L. R. 79.

¹¹ *Shimbu Narain*, (1923) 45 All. 495.

him in the police-station though one of them knew his name and address and it was not found to what extent he was a danger to others or their property, it was held that the arrest having been made by the police-officers without warrant, for a non-cognizable offence, their action amounted to wrongful confinement, unless it was justified on the ground of right of private defence or under s. 81 as was, in fact held by the Court.¹

341. Whoever wrongfully restrains any person, shall be punished
Punishment for wrongful restraint. with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

342. Whoever wrongfully confines any person, shall be punished
Punishment for wrongful confinement. with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

343. Whoever wrongfully confines any person for three days or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
Wrongful confinement for three or more days.

344. Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
Wrongful confinement for ten or more days.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this Chapter.
Wrongful confinement of person for whose liberation writ has been issued.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.
Wrongful confinement in secret.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the
Wrongful confinement to extort property, or constrain to illegal act.

¹ *Gopal Naidu*, (1922) 46 Mad. 605, F.B.

person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—This and the next section may be compared with ss. 329 and 330, as the aggravating circumstances mentioned in the former are the same as those in the latter.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession, or compel restoration of property.

COMMENT.—This section may be compared with s. 330. In the former case confession is extorted by wrongful confinement; in the latter, by causing hurt.

Of Criminal Force and Assault.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:

Force.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

COMMENT.—'Force' as defined in this section contemplates the presence of

the person to whom it is used, that is to say it contemplates the presence of the person using the force and of the person to whom the force is used.¹

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Criminal force.

ILLUSTRATIONS.

(a) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other action on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(b) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z.

(c) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(e) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z: and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(f) A intentionally pulls up a woman's veil. Here A intentionally uses force to her, and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(g) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally by his own bodily power causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force

¹ *Bihari Lal*, (1984) 15 Lah. 786, 789.

to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(h) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

COMMENT.—The preceding section defines 'force.' This section says that 'force' becomes criminal (1) when it is used without consent and in order to the committing of an offence, or (2) when it is intentionally used to cause injury, fear or annoyance to another to whom the force is used.

The term 'criminal force' includes what in English law is called 'battery.' It will, however, be remembered that 'criminal force' may be so slight as not to amount to an offence (s. 95), and it will be observed that 'criminal force' does not include anything that the doer does by means of another person. The definition of 'criminal force' is so wide as to include force of almost every description of which a person is the ultimate object.

Ingredients.—The section requires—

- (1) The intentional use of force to any person.
- (2) Such force must have been used without the person's consent.
- (3) The force must have been used—

- (a) in order to the committing of an offence; or
- (b) with the intention to cause, or knowing it to be likely that he will cause, injury, fear or annoyance to the person to whom it is used.

Illustrations.—The various illustrations exemplify the different ingredients of the definition of 'force' given in s. 349. Illustration (a) exemplifies 'motion'; ill. (b), 'change of motion'; ill. (c), 'cessation of motion'; ill. (d), (e), (g) and (h), 'bring that substance into contact with any part of that other's body'; ill. (f) and (g), 'other's sense of feeling.' Clause 1 of s. 349 is illustrated by ill. (c), (d), (e), (f) and (g); cl. 2, by ill. (a); and cl. 3, by ill. (b) and (h).

351. Whoever makes any gesture, or any preparation¹ intending or knowing it to be likely² that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

ILLUSTRATIONS.

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending, or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

COMMENT.—It is not every threat, when there is no actual personal violence that constitutes an assault; there must, in all cases, be the means of carrying the threat into effect. If a person is advancing in a threatening attitude, with an intention to strike another so that his blow will almost immediately reach the other, if he is not stopped, then this is an assault in point of law, though at the particular moment when he is stopped, he is not near enough for his blow to take effect.¹

Assault: criminal force.—An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. It seems to consist in an attempt or offer by a person having present ability with force to do any hurt or violence to the person of another. It is committed whenever a well-founded apprehension of immediate peril, from a force already partially or fully put in motion, is created. An assault is included in every use of criminal force.²

Ingredients.—The section requires two things—

- (1) Making of any gesture or preparation by a person in the presence of another.
- (2) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

1. 'Makes any gesture, or any preparation.'—Illustration (a) illustrates that gestures which cause a person to apprehend that the person making them is about to use criminal force amount to an assault. It is an assault to point a loaded pistol at any one.³ It was held similarly where the accused pointed a gun at the complainant and pulled the trigger but no discharge resulted, and there was no evidence that the gun was loaded.⁴

The apprehension of the use of criminal force must be from the person making the gesture or preparation and if that apprehension arises not from that person but from somebody else it does not amount to assault on the part of that person. Further, criminal force cannot be said to be used by one person to another by causing change in the position of another human being. Where, therefore, the accused himself did nothing which could come under the definition of assault but simply made a gesture at which his followers advanced a little forward towards the complainant in a threatening manner, it was held that he was not guilty of the offence of assault under s. 333.⁵

Though mere preparation to commit a crime is not punishable (sec s. 511), yet preparation with the intention specified in the section amounts to an assault: see ill. (b).

2. 'Intending or knowing it to be likely.'—Intention or knowledge is the gist of the offence.

English law.—An assault consists in an attempt or offer by a person, having present ability, with force to do any hurt or violence to the person of another. Striking at another with a cane, stick, or fist, although the blow misses, drawing a sword or a bayonet, or throwing a bottle or glass, with intent to wound or strike, presenting a loaded gun at a man within range, or any other act indicating an intention to use violence against the person of another, is an assault. Battery is defined to be "any least hurt or violence unlawfully and wilfully or culpably done to the person of another."

¹ *Stephens v. Myers*, (1830) 4 C. & P. 349.

² *M. & M.* 309.

³ *James*, (1841) 1 C. & K. 530.

⁴ *Nga Waik*, (1923) 1 Rao. 209.

⁵ *Muneshwar Bux Singh*, (1938) 14 Luck. 409.

Explanation.—Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In the latter case, the effect of the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.¹ A preparation taken with words which would cause a person to apprehend that criminal force would be used to him, if he persisted in a particular course of conduct, does not amount to an assault, if there is no evidence to show that the accused was about to use criminal force to him then and there.²

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or

if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

COMMENT.—This section provides punishment for assault or use of criminal force when there are no aggravating circumstances.

See s. 300, Exception 1, which is identical with this Explanation.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—The public servant must be acting in the discharge of a duty imposed by law on him in the particular case, and the section will not protect him

¹ *A. C. Cama v. H. F. Morgan*, ² *Birbal Khalifa*, (1902) 30 Cal. 97. (1864) 1 B. H. C. 205.

for an act done in good faith under colour of his office.¹ An act which is the very contrary of the duties of a public servant cannot be said to be done by a public servant while acting or purporting to act in the discharge of his official duties.² An assault on a public servant who is not discharging a duty imposed on him by law when he is assaulted falls under s. 352.³

If hurt is caused under the circumstances mentioned in the section then either s. 382 or s. 383 will apply.

CASES.—Defect in warrant.—Where a warrant for the arrest of a person, in execution of a civil process, was not signed in full as required by s. 251 of the Criminal Procedure Code, but was initialled by the officer issuing it, and was resisted by the person when the officer to whom it was entrusted sought to execute it, it was held that the person was guilty under this section and the preliminary defect in the warrant formed no defence.⁴ But if such warrant is signed by an unauthorized person,⁵ or if the date fixed for the execution of the warrant has expired,⁶ resistance is not illegal.

Search without proper order or warrant.—Where the accused resisted a public officer who attempted to search a house, in the absence of a proper written order authorizing him to do so, he was held to have committed no offence under this section.⁷ But the Madras High Court has held that a search without a search-warrant does not justify an obstruction or resistance to an officer, if he was acting in good faith and without malice.⁸

Public servant must be acting in execution of duty.—Where a cart-owner refused to give his cart for the use of a Forest Settlement Officer who required it as per executive orders of Government, and assaulted the peon in preventing him from seizing his cart, it was held that he could not be convicted of an offence under this section, because the rules aforesaid had not the force of law, and a public servant acting under them was not acting in the execution of his duty.⁹

Seizure of property on person.—In executing a writ of attachment before judgment of moveable property in the possession of the defendant (accused), the bailiff attempted to seize by violence money on the person of the accused and in resisting the seizure the accused used criminal force against the bailiff. The accused was charged with an offence under this section. It was held that the bailiff while executing the writ in accordance with Order XXI, rule 43, Civil Procedure Code, had no authority to lay violent hands on the person of the accused and *seizure by force property found thereon*, and the accused was therefore not guilty.¹⁰

354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

¹ *Dakip*, (1896) 18 All. 246; *Raman Singh*, (1900) 28 Cal. 411, 414; *Bolani De*, (1907) 35 Cal. 361; *Provincial Government, Central Provinces and Berar v. Nonelal*, [1946] Nag. 395.

² *Afzalur Rahman*, (1942) 22 Pat. 76.

³ *Provincial Government, Central Provinces and Berar v. Nonelal*, [1946]

Nag. 395.

⁴ *Janki Prasad*, (1886) 8 All. 293.

⁵ *Jatpal Korri*, (1917) 2 P.L.J. 487.

⁶ *Raghunir*, (1941) 17 Luck. 311.

⁷ *Narain*, (1875) 7 N. W. P. 209.

⁸ *Pukot Kotu*, (1896) 19 Mud. 349.

⁹ *Rakhmaji*, (1885) 9 Bom. 558.

¹⁰ *Ghanshamdas*, [1946] Kar. 57.

COMMENT.—An indecent assault upon a woman is punished under this section. Rape is punished under s. 376; but the offence under this section is of less gravity than rape.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person, otherwise than on grave provocation.

COMMENT.—The intention to dishonour may be supposed to exist when the assault or criminal force is by means of gross insults. An accused person while under trial struck a Sub-Inspector of Police who was in the witness-box giving evidence against him. It was held that he was guilty of this offence.¹

356. Whoever assaults or uses criminal force to any person in attempting to commit theft of any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

Assault or criminal force in attempt wrongfully to confine a person.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

Assault or criminal force on grave provocation.

Explanation.—The last ^{this} section is subject to the same Explanation as section 352.

COMMENT.—This section provides for mild punishment if the assault or criminal force is the result of grave and sudden provocation.

The word “last” in the Explanation is inaccurate. Instead of the words “the last” the word “this” only should have been used.

Of Kidnapping, Abduction, Slavery and Forced Labour.

359. Kidnapping is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping.

COMMENT.—The literal meaning of ‘kidnapping’ is child-stealing.

Kidnapping is of two kinds. But there may be cases in which the two kinds overlap each other. For instance, a minor may be kidnapped from British India as well as from lawful guardianship.

¹ *Altaf Mian*, (1907) 27 A. W. N. 186.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some ^{Kidnapping from British India.} person legally authorised to consent on behalf of that person, is said to kidnap that person from British India.

COMMENT.—The offence under this section may be committed on a grown-up person or a minor by conveying him or her beyond the limits of British India. If the person kidnapped is above twelve years of age and has given consent to his or her being conveyed beyond the limits of British India, no offence is committed.¹

Ingredients.—This section requires two things :—

(1) Conveying of any person beyond the limits of British India.

(2) Such conveying must be without the consent of that person.

361. Whoever takes or entices any minor¹, under fourteen years of age if a male, or under sixteen years of age if a female,² or any person of unsound mind,³ out of the keeping of the lawful guardian⁴, of such minor or person of unsound mind, without the consent of such guardian,⁵ is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

COMMENT.—The offence under this section may be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person, therefore, would not amount to an offence under it.

Object.—The object of this section is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons.

Ingredients.—This section has four essentials :—

(1) Taking or enticing away a minor or a person of unsound mind.

(2) Such minor must be under fourteen years of age, if a male, or under sixteen years of age, if a female.

(3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

(4) Such taking or enticing must be without the consent of such guardian.

1. ‘Takes or entices any minor’—The taking need not be by force, actual or constructive, and it is immaterial whether the girl consents or not.² There must be a taking of the child out of the possession of the parent. If a child leaves its

¹ *Haribhai Dada*, (1918) 20 Bom. ² *Manktelow*, (1858) 6 Cox 143.
L. R. 372, 42 Bom. 291.

parents' house for a particular purpose with their consent it cannot be said to be out of the parents' keeping. A mere leading of a not unwilling child would be sufficient.

The word 'taking' means physical taking. Thus, where a father sent his daughter to live in a house with another married daughter of his, who got her married to an inmate of the house without the consent of the father, it was held that no offence was committed by the married daughter, because there was no taking out of lawful guardianship inasmuch as the daughter never left the house where she was residing with the consent of the father.¹

The period of detention is immaterial to the offence.

When 'taking' is complete.—The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as the minor is kept out of such guardianship.

The act of taking is not, in the proper sense of the term, a continuous act: when once the boy or girl has been actually taken out of the keeping, the act is a completed one. If continuous, it would be difficult to say when the continuous taking ceased: it could only be when the boy or girl was actually restored to the keeping of the guardian. But this would constitute not the act of "taking" but an act of "detaining."² J, a minor girl, was taken away from her husband's house to the house of R and there kept for two days. Then one M came and took her away to his own house and kept her there for twenty days, and subsequently clandestinely removed her to the house of the accused, and from that house the accused and M took her through different places to Calcutta. It was held that the taking away out of the guardianship of the husband was complete before the accused joined the principal offender in taking the girl to Calcutta, and that the accused, therefore, could not be convicted under s. 363.³ Where L enticed a minor girl to come out of terrace to the road and then to the motor car in which R was sitting, so that the latter might drive away with her, it was held that the offence of kidnapping was complete only when R drove away with her.⁴

The offence is completed so soon as the minor is actually taken out of the custody of his or her guardian. There can be no abetment of this offence in such a case on the hypothesis that the offence is a continuing one. But if there is a conspiracy before the kidnapping takes place, a conviction for abetment of kidnapping can be sustained.⁵

'Enticing' is an act of the accused by which the person kidnapped is induced of his own accord to go to the kidnapper.

2. 'Under fourteen years of age if a male, or under sixteen years of age if a female.'—In the case of a boy the age limit is fixed at fourteen years; in the case of a girl at sixteen. Where a girl under sixteen years of age is kidnapped, it is no defence that the accused did not know the girl to be under sixteen, or that from her appearance he might have thought she was of a greater age.⁶ Any one dealing with such a girl does so at his peril, and if she turn out to be under sixteen

¹ *Jagan Nath*, (1914) 15 Cr. L. J. 680. (1892) P. R. No. 6 of 1894; *Durga Das*, (1904) P. R. No. 13 of 1904.

² *Nemai Chatteraj*, (1900) 27 Cal. 1041, 1047, F.B.; *Nanhak Sao*, (1920)

³ *Nemai Chatteraj*, *ibid*.
⁴ *Rekha Rai*, (1927) 6 Pat. 471.

⁵ Pat. 536; *Chekrutty*, (1902) 26 Mad.

⁶ *Tika*, (1903) 26 All. 197.

454; *Ram Dri*, (1896) 18 All. 350; *Ram Sundar*, (1896) 10 All. 109; *Chanda*,

⁷ *Robins*, (1844) 1 C. & K. 456; *Krishna Maharana*, (1929) 9 Pat. 647.

he must take the consequences,¹ even though he *bona fide* believed and had reasonable ground for believing that she was over sixteen.²

3. 'Any person of unsound mind.'—If the person kidnapped is normally of sound mind but is made unconscious from poisoning, such a person cannot be said to be of unsound mind. For example, a person under an anaesthetic for an operation can hardly be said to be of unsound mind. Where a girl aged twenty years had been made unconscious from *dhatu* poisoning when she was taken away, it was held that she could not be said to be a person of unsound mind, and the person taking her away could not be guilty of kidnapping.³

4. 'Out of the keeping of the lawful guardian.'—The word 'keeping,' implies neither prehension nor detention but rather maintenance, protection and control, manifested not by continual action but as available on necessity arising. And this relation between the minor and the guardian is certainly not dissolved so long as the minor can at will take advantage of it and place herself within the sphere of its operation.⁴ The guardianship of the mother does not cease while a minor is in the possession of another person who has been lawfully entrusted with the care and custody of such minor by the mother.⁵

There must be a taking or enticing of a child out of the keeping of the lawful guardian. Where a minor abandons the house of her guardian of her own accord and has no intention of returning to the house, she cannot be held to continue in the keeping of her lawful guardian.⁶ Where a girl had run away from home in consequence of ill-treatment, and, on meeting the accused on the road, had agreed to take service as a coolie and went with him, it was held that this offence was not committed.⁷ In such cases it cannot be said that she was taken or enticed away out of the keeping of the lawful guardian.⁸

If the minor is not in the custody of a lawful guardian the offence cannot be committed whatever the belief of the taker may be.⁹

According to Mahomedan law the occurrence of puberty determines minority and the mother's right to custody, but under this section regard must be had only to the definition of minority in s. 3 of the Indian Majority Act.¹⁰

5. 'Without the consent of such guardian.'—The taking or enticing of the minor out of the keeping of the lawful guardian must be without his consent. The consent of the minor is immaterial.¹¹ If a man by false and fraudulent representations induce the parents of a girl to allow him to take her away, such taking will amount to kidnapping.¹² Consent given by the guardian after the commission of the offence would not cure it.¹³

Where a person carried off, without the consent of her father, a girl to whom he was betrothed by her father, because the father suddenly changed his mind and broke off the marriage, it was held that he was guilty of kidnapping.¹⁴

¹ *Christian Olstier*, (1866) 10 Cox 402.

² *Prince*, (1875) L. R. 2 C. C. R. 154; *Krishna Maharana*, (1929) 9 Pat. 647.

³ *Din Mohammad*, (1939) Lah. 517.

⁴ *Jetha*, (1904) 6 Bom. L. R. 785, 788.

⁵ *K. K. Ali*, (1936) 15 Pat. 817.

⁶ *Israr Hussain*, (1941) 17 Luck. 128.

⁷ *Gunder Singh*, (1865) 4 W.R.(Cr.) 6.

⁸ *Ewaz Ali*, (1915) 37 All. 624.

⁹ *Hardeo*, (1879) P. R. No. 7 of 1880.

¹⁰ *Muthu Ibrahi*, (1918) 87 Mad. 567; *Miran Baksh*, (1905) P. R. No. 60 of 1905.

¹¹ *Bhungee Ahur*, (1865) 2 W. R. (Cr.) 5.

¹² *Hopkins*, (1942) C. & M. 254.

¹³ *Ganesh*, (1909) 31 All. 448.

¹⁴ *Gooroodoss Rajbunsee*, (1865) 4 W. R. (Cr.) 7.

Marrying girl without consent of her lawful guardian.—Where the mother had assigned by a will the guardianship of her minor daughter and the duty of marrying her to R, and a paternal relative of the daughter removed her by fraud and force for the purpose of getting her married to a person other than the one selected by R, it was held that the paternal relative was guilty of kidnapping as well as abducting.¹ Where the paternal uncle's son of a minor girl took her away from the custody of her brother's widow for the purpose of giving her in marriage, it was held that such a relationship would not be a defence to a charge of kidnapping a minor from the custody of a *de facto* guardian.² Where a Hindu woman left her husband's house with her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A was guilty of an offence, under ss. 109 and 363, of abetting kidnapping.³ Where a girl who was under the temporary guardianship of a person was taken away with his consent and married to a boy without the consent of her father, this offence was held to have been committed.⁴

Explanation.—'Lawful guardian.'—The Explanation is intended to extend the protection given to parents to any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or a friend, for a limited purpose and for a limited time, cannot determine the father's rights as guardian or his legal possession for the purposes of the criminal law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping even though the actual physical possession should be temporarily with a friend or other person.⁵

As against a person who in fact is the civil law guardian of the minor mere *de facto* guardianship cannot be set up so as to convict the real civil law guardian of this offence.⁶

The word 'lawful' does not necessarily mean that the person who entrusts a minor to the care or custody of another must stand in the position of a person having a legal duty or obligation to the minor. The expression "lawful guardian" must be literally construed so as to distinguish it from "legal guardian" as a guardian may be lawful without being legal.⁷ The expression "lawfully entrusted" signifies that the care and custody of a minor should have arisen in some lawful manner so as to show as if the person having the custody of the minor had been entrusted with the care and custody of the minor.⁸ The entrusting of the minor to the care or custody of another must be effected without illegality or the commission of an unlawful act by a person legally competent to do so.⁹

'Entrusted' means the giving, handing over, or confiding of something by one person to another. It involves the idea of active power and motive by the person reposing the confidence towards the person in whom the confidence is reposed.¹⁰ The 'entrustment' may be by a legal guardian; it may be written or oral, express or implied. In the absence of a legal guardian or proof of declaration, written

¹ *Bai Mahakor*, (1895) Unrep. Cr. Fatti, (1911) P. R. No. 7 of 1911; *Baz*, (1922) 3 Lah. 213.

² *Sital Prasad*, (1919) 42 All. 146.

³ *Frankrishna Surma*, (1882) 8 Cal. 969.

⁴ *Jagannadha Rao v. Kamaraju*, (1900) 24 Mad. 284; *Baz*, (1922) 3 Lah. 213.

⁵ *Jagannadha Rao v. Kamaraju*, (1900) 24 Mad. 284, 291; *Mussammal*

⁶ *Saharati Mahammad v. Kamrud-din Mahammad*, (1930) 58 Cal. 897.

⁷ *Nathusingh*, [1942] Nag. 3A.

⁸ *Ibid*.

⁹ *Mussammal Kesar*, (1918) 4 P.L.J.

74, F.B.

¹⁰ *Ibid*.

or oral by a legal guardian, the entrustment may be presumed from well defined and consistent course of conduct of a person alleged to be the lawful guardian of the minor or of the person actually taking upon himself the duties of the care and custody of the minor.¹

Hindu law.—A father is the guardian of his children and is ordinarily entitled to their custody. A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily, the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. If a mother removes a girl from her father's house for the express purpose of marrying her without his consent, it will amount to a taking out of the keeping of the lawful guardian.² A boy born of Hindu parents had been brought up by his mother and was in her keeping from the date of his birth. The father who was living separately did not object to the mother having the custody of the child. Some time later, the father, by deceitful means, took the child away from the mother and kept the boy with him. He was convicted of an offence under s. 363. It was held that the conviction was bad.³

The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor.⁴

The only persons having an absolute right to the custody of a Hindu minor are the father and the mother of the minor. No such right exists in the person who happens to be the nearest major male relative of the minor.⁵

Among the Hindus according to a well recognised custom a minor married girl, until she attains puberty, continues to be under the guardianship of her father if she is legitimate and of her mother if she is illegitimate. The husband of a Hindu girl of fifteen is her lawful guardian: and, if the father of the minor takes away the girl from her husband, without the latter's consent, such taking away amounts to kidnapping from lawful guardianship even though the father may have had no criminal intention in so doing.⁶ Where a married girl had been away from her husband's house for a period of five or six years, and lived with her mother, it was held that she was not in the "keeping" of her husband but that of her mother.⁷ The husband's relations within the degree of a *sapinda* are guardians of a minor widow in preference to her father or his relations.⁸

Mahomedan law.—Under Mahomedan law, if the father takes away a son under seven years, or a daughter under puberty, if Sunni, or under seven years, if Shiah, or an illegitimate child from the custody of the mother, he can be said to kidnap his own child, because the mother is by law the lawful guardian.⁹ According to Sunni law, the mother is the guardian of her daughter till she reaches puberty which

¹ *Nathusingh*, [1942] Nag. 34.

² *Prankrishna Surma*, (1882) 8 Cal. 960.

³ *Chordmayya*, [1938] Mad. 805.

⁴ *Pemantle*, (1882) 8 Cal. 971; *Mussammatt Soma*, (1916) P. R. No. 17 of 1916.

⁵ *Sital Prasad*, (1919) 42 All. 146.

⁶ *Dhuronidhur Ghose*, (1889) 17 Cal.

298.

⁷ *Banamali Tripathy*, (1942) 22 Pat. 263.

⁸ *Tek Chand*, (1915) P. R. No. 27 of 1915.

⁹ *Nur Kadir v. Zuleikha Bibi*, (1885) 11 Cal. 640; *Hamid Ali v. Imtiazan*, (1878) 2 All. 71; *Idu v. Amiran*, (1886) 8 All. 322.

is presumed when the daughter completes her fifteenth year. Even a divorced wife is entitled to the custody of her children.¹ After mother come the father and other relations standing within prohibited degrees.

The husband becomes the guardian of his wife after she attains puberty.² Removal of a girl of eleven or twelve from the custody of her mother-in-law at the instigation of her mother is not kidnapping.³

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction.

COMMENT.—This section merely gives a definition of the word ‘abduction’ which occurs in some of the penal provisions which follow. There is no such offence as abduction under the Code, but abduction with certain intent is an offence. Force or fraud is essential.

Ingredients.—The section requires two things:—

- (1) Forceful compulsion or inducement by deceitful means.
- (2) The object of such compulsion or inducement must be the going of a person from any place.

Abduction and kidnapping.—(1) ‘Kidnapping’ is committed only in respect of a minor under fourteen years of age if a male, and under sixteen years if a female or a person of unsound mind; ‘abduction,’ in respect of a person of any age.

(2) In ‘kidnapping,’ the person kidnapped is removed out of a lawful guardianship. A child without a guardian cannot be kidnapped. ‘Abduction’ has reference exclusively to the person abducted.

(3) In ‘kidnapping’ the minor is simply taken away. The means used may be innocent. In ‘abduction’ force, compulsion, or deceitful means are used.

(4) In kidnapping, consent of the person taken or enticed is immaterial; in abduction, consent of the person moved, if freely and voluntarily given, condones abduction.

(5) In kidnapping, the intent of the offender is a wholly irrelevant consideration; in abduction, it is the all-important factor.

(6) Kidnapping from guardianship is a substantive offence under the Code; but abduction is an auxiliary act, not punishable by itself, but made criminal only when it is done with one or other of the intents specified in s. 364, et seq.

Continuing offence.—The offence of abduction is a continuing offence, and a girl is being abducted not only when she is first taken from any public place but also when she is removed from one place to another.⁴

Abetment.—A married woman cannot abet her own abduction as herein defined.⁵

CASE.—Where a mother-in-law deceitfully induced her widowed daughter-in-law, under sixteen years of age, to go from one place to another and then handed her over to A and B with intent that she might be compelled to marry against her will, it was held that the mother-in-law and A and B were guilty of an offence under s. 366.⁶

¹ *Ayashabai*, (1904) 6 Bom. L. R. 536; *Zarabibi v. Abdul Rezzak*, (1910) 12 Bom. L. R. 891.

² *Nur Kadir v. Zuleikha Bibi*, (1885) 11 Cal. 649.

³ *Korban*, (1904) 32 Cal. 444.

⁴ *Ganga Dei*, (1914) 12 A. L. J. R. 91; *Nanhua Dhimar*, (1930) 53 All. 140.

⁵ *Natha Singh*, (1883) P. R. No. 11 of 1883.

⁶ *Sant Ram*, (1929) 11 Lah. 178.

363. Whoever kidnaps any person from British India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for kidnapping.

COMMENT.—This section must be read with s. 361. The offence of kidnapping from lawful guardianship penalised by this section is the offence which is defined by s. 361. The person against whom the offence is committed must be under the age of fourteen, if a male, and under the age of sixteen, if a female.¹

364. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

ILLUSTRATIONS.

(a) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section

(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

366. Whoever kidnaps or abducts any woman¹ with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will,² or in order that she may be forced or seduced to illicit intercourse,³ or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Kidnapping, abducting or inducing woman to compel her marriage, etc.

COMMENT.—The second para. to this section and sections 366A and 366B were added by Act XX of 1923 in order to give effect to certain Articles of the International Convention for the Suppression of the Traffic in Women and Children.

¹ *Ismail Sayadsahab*, (1933) 35 Bom. L. R. 880, 57 Bom. 537, F.B.

Where a woman has no intention of marriage or illicit intercourse when kidnapped, this section applies.

Ingredients.—The section requires.—

1. Kidnapping or abducting of any woman.
2. Such kidnapping or abducting must be—
 - (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will ; or
 - (ii) in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse ; or
 - (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not.

1. 'Kidnaps or abducts any woman.'—If the girl was sixteen or over, she could only be abducted and not kidnapped, but if she was under sixteen she could be kidnapped as well as abducted if the taking was by force or the taking or enticing was by deceitful means.¹

2. 'With intent that she may be compelled....to marry any person against her will.'—The intention of the accused is the basis and the gravamen of the offence under this section. The volition, the intention and the conduct of the woman do not determine the offence : they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not in the event the woman consented to the marriage or the illicit intercourse.² The word 'marry' in the section implies going through a form of marriage whether the same is in fact valid or not.³

Every act done "against the will" of a person is done "without his consent," but an act done "without the consent" of a person is not necessarily "against his will," which expression imports that the act is done in spite of the opposition of the person to the doing of it.⁴

3. 'Forced or seduced to illicit intercourse.'—The word 'forced' is used in its ordinary dictionary sense and includes force by stress of circumstances. The Calcutta, the Patna, the Madras and the Bombay High Courts have held that 'seduction' is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.⁵ A person may be guilty of kidnapping a girl for the purpose of seducing her to illicit intercourse even though he has also had such intercourse prior to the kidnapping.⁶ The Allahabad and the Lahore High Courts are of the opinion that the term 'seduction' can only properly be held applicable to the first act of illicit intercourse unless there be proof of a return to chastity on the part of the girl meanwhile, or unless possibly there is an intention on the accused's part that the

¹ *Prafullakumar Basu*, (1929) 57 Cal. 1074, 1079.

² *Khalil-Ur-Rahman*, (1933) 11 Ran. 213, F.B.

³ *Tahir Khan*, (1917) 45 Cal. 641; *Sani Ram*, (1929) 11 Lah. 178.

⁴ *Khalil-Ur-Rahman*, sup.

⁵ *Prafullakumar Basu*, (1929) 57 Cal. 1074; *Krishna Maharana*, (1929) 9 Pat. 647; *Suppiah*, [1930] M. W. N. 905, 32 Cr. L.J. 357; *Lakshman Bala*, (1934) 37 Bom. L. R. 176, 59 Bom. 652.

⁶ *Krishna Maharana*, sup.; *Lakshman Bala*, sup.

girl should be seduced by some different man. Further the act of seduction alleged must be subsequent to the kidnapping in order to make this section applicable. This section, therefore, cannot be applied to a case where the accused has been carrying on an intrigue with a girl under sixteen while she is in the custody of her lawful guardian, and goes away with her because obstacles are thrown in the way of that intrigue, even though when he so goes away with her it is with the intention of carrying on that intrigue, or in other words, with the intention of continuing illicit intercourse.¹

Consent of the girl immaterial.—Where a girl, over fourteen and under sixteen years of age and in lawful custody, consents to an act of illicit intercourse with a man and is persuaded to elope with him for that purpose, the offence of kidnapping punishable under this section is committed.²

Sheltering girls to seduce them to illicit intercourse.—Where two girls under the age of sixteen years ran away from their houses and remained for one or two days in the house of a woman of quality and no report was made to the police, it was held that the woman in whose house the girl stayed was guilty of an offence under this section.³

366A. Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

COMMENT.—This section and s. 366B were added by Act XX of 1923 to give effect to certain Articles of the International Convention for the Suppression of the Traffic in Women and Children.

Both the sections are intended to punish the export and import of girls for prostitution. Section 366A deals with procuration of minor girls from one part of British India to another. Section 366B makes it an offence to import into British India from any country outside India or from any State in India girls below the age of twenty-one years for the purpose of prostitution.

Ingredients.—The section requires two things : (1) inducing a girl under eighteen years to go from any place or to do an act, and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person.

An offence under this section is one of inducement with a particular object, and when after the inducement the offender offers the girl to several persons a fresh offence is not committed at every fresh offer for sale.⁴

366B. Whoever imports into British India from any country outside India any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person,

¹ *Baijnath*, (1932) 54 All. 736; *Nura*, (1938) 35 Cr. L. J. 1386.

² *Ayubkhan Mir Sultan*, (1948) 46 Bom. L. R. 203.

³ *Jasauli*, (1912) 84 All. 340; *Bahadur*, (1880) P. R. No. 7 of 1881.

⁴ *Sis Ram*, (1929) 51 All. 888.

and whoever with such intent or knowledge imports into British India from any State in India any such girl who has with the like intent or knowledge been imported into India, whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

COMMENT.—This section makes it an offence (1) to import into British India from any country outside India a girl under the age of twenty-one years with the intent or knowledge specified in the section, or (2) to import into British India from any State in India a girl under the age of twenty-one years who has been imported into such State from any country outside India with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with any person. The Select Committee in their Report observed: "The case of girls imported from a foreign country we propose to deal with by the insertion of a new section 366B in the Code. We are unanimously of opinion that the Convention will be substantially met by penalising the importation of girls from a foreign country. At the same time we have so worded the clause as to prevent its being made a dead-letter by the adoption of the course of importing the girl first into an Indian State."¹

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement, kidnapped or abducted person.

COMMENT.—This section does not apply to the principal offender but to those persons who assist him in concealing a kidnapped or abducted person. It refers to some other party who assists in concealing any person who has been kidnapped. A kidnapper cannot be convicted under this section.² This is one of those sections in which subsequent abetment is punished as a substantive offence.

369. Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either

Kidnapping or abducting child under ten years with intent to steal from its person.

¹ *Gazette of India*, dated February 10, 1923, Part V, p. 79. ² *Bannu Mal*, (1926) 2 Luck. 249.

description for a term which may extend to seven years, and shall also be liable to fine.

370. Whoever imports, exports, removes, buys, sells or disposes of any person as a slave,¹ or accepts, receives or detains against his will any person as a slave,¹ shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹ Buying or disposing of any person as a slave.

COMMENT.—The sections of the Code relating to slavery were enacted for the suppression of slavery, not only in its strict and proper sense, namely, that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power is asserted over the liberty of another.¹

Ingredients.—This section makes penal—

- (1) the importation, exportation, removal, buying, selling, of a person as a slave ;
- (2) the disposal of a person as a slave ; and
- (3) the acceptance, reception, or detention, of any person against his will as a slave.

1. 'As a slave.'—'Slave' is a creature without any rights or any status whatsoever, who is or may become the property of another as a mere chattel, the owner having absolute power of disposal by sale, gift, or otherwise, and even of life or death, over the slave, without being responsible to any legal authority.²

There must be a selling or disposal of a person "as a slave" that is, a selling or disposal whereby one who claims to have a property in the person as a slave transfers that property to another.³

Buying girls for marriage.—Buying or importing girls with a view to marriage is not punishable under this section.⁴ Where R, having obtained possession of D, a girl of eleven years of age, disposed of her to a third person for value, with intent that such person should marry her, and such person received her with that intent, it was held that R could not be convicted of disposing of D as a slave under this section.⁵

CASES.—**Selling girl.**—A kidnapped a Hindu girl and sold her to B, a Mahomedan; B made her a Mahomedan, changed her name, supplied her with food and clothes, but gave her no wages. She was employed in menial services, and was not allowed to leave the house. After staying thus for four years the girl escaped. It was held that B was guilty of an offence under this section.⁶

Buying girl.—S transferred to A for Rs. 25 his rights in the person of B, a girl of thirteen years. In a document in which the transaction was recorded, B

¹ *Ram Kuar*, (1880) 2 All. 723, of 1884.
731, F.B.

² Per Stuart, C. J., in *Ram Kuar*, (1880) 2 All. 723, 726, F.B.

³ Per Oldfield, J., in *ibid.*, p. 731.

⁴ *Roda*, (1867) P. R. No. 19 of 1867; *Ganpat*, (1884) P. R. No. 20

⁵ *Ram Kuar*, *sup.*

⁶ *Mirza Sikundur Bukhut*, (1871) 3 N. W. P. 146. This has been pronounced to be a most extraordinary decision by Stuart, C. J., in *Ram Kuar's* case, *sup.*

was described as a slave girl purchased by S from P. It was held that A was guilty of buying B as a slave.¹

371. Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Habitual dealing in slaves.

COMMENT.—The section is provided for the punishment of the slave-trader who is habitually engaged in the traffic of buying and selling human beings. The preceding section dealt with the casual offender.

372. Whoever sells, lets to hire, or otherwise disposes of¹ any person under the age of eighteen years² with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose,³ or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Selling minor for purposes of prostitution, etc.

Explanation 1.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section ‘illicit intercourse’ means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.

COMMENT.—This section requires :—

- (1) Selling, or letting to hire, or other disposal of a person.
- (2) Such person should be under the age of eighteen years.
- (3) The selling, letting to hire, or other disposal must be with intent or knowledge of likelihood that the person shall at any age be employed or used for
 - (i) prostitution, or
 - (ii) illicit intercourse with any person, or
 - (iii) any unlawful and immoral purpose.

Scope.—This section applies to males or females under the age of eighteen years.² It applies to a married or an unmarried female even where such female, prior to

¹ *Amina*, (1864) 7 Mad. 277.

² *Kammu*, (1878) P. R. No. 12 of 1879.

transaction, it does not follow that an offence under this section, which is aimed at obtaining possession, must involve two parties.¹

This section does not specify the nature of the possession, nor its duration, nor intensity. It merely specifies the object, namely, prostitution or illicit intercourse. Whether, in each case, the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse is the only test which in law is necessary and sufficient. Where, therefore, a brothel-keeper allowed a girl under eighteen years of age to visit the brothel for two or three hours in the night, and allowed her to prostitute herself to customers for money, it was held that the brothel-keeper was guilty of an offence under this section.² The term "possession" means something more than the obtaining of possession of a girl by a man for a single act of sexual intercourse. It denotes definite control over the person of whom possession is obtained. It indicates possession with a power of disposal.³ The Calcutta High Court has dissented from this view and held that the section has no application to a case where the accused obtains possession of a girl with the intention of having illicit intercourse with her himself. The word 'possession' implies some sort of control. When a girl elopes with another of her own accord and there is nothing to show that she cannot leave him at any moment the man cannot be said to have possession of the girl.⁴

2. 'Person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person, etc.'—The age limit was raised to eighteen years by Act V of 1924.

The introduction of the words 'at any age' indicates that the offence is committed even if the employment of the person for immoral purpose is to take place after the completion of eighteen years, that is, at any time.

The words 'illicit intercourse' are explained in Explanation 2 to s. 372. See comment on s. 372.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Unlawful compulsory labour.

COMMENT.—This section is intended to put a stop to the practice of forced labour which was and is still to a certain extent in vogue in this country. It requires—

(1) Unlawful compulsion of any person.

(2) The unlawful compulsion must be to labour against the will of that person.

This section is aimed at the abuses arising from forced labour which ryots were in former times compelled to render to great landholders.

Where the accused induced the complainants, who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts, and the complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants, and he insisted on their working for him, and punished them by beating them if they did not do so, it was held that he was not guilty under this section though his act came within s. 352.⁵

¹ *Gordhan Kallidas*, (1941) 43 Bom. 379, 58 Bom. 498.

L. R. 847, [1942] Bom. 7.

² *Jateendra Mohan Das*, [1937] 2

³ *Vithabai Sukha*, (1928) 80 Bom. Cal. 187.

L. R. 613, 52 Bom. 403.

⁴ *Madan Mohan Biswas*, (1923) 19

⁵ *Bhagchand*, (1934) 86 Bom. L. R. Cal. 572.

Of Rape.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under fourteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—*Ingredients.*—The section requires two things :—

(1) Sexual intercourse by a man with a woman.

(2) The sexual intercourse must be under circumstances falling under any of the five clauses of the section.

Second clause.—It is no defence that the woman consented after the act.¹

Sexual intercourse with idiot or drunken person.—Where a man had carnal knowledge of a girl of imbecile mind, and the jury found that it was without her consent, she being incapable of giving consent from defect of understanding, it was held that this amounted to rape.² Where the accused made a woman quite drunk, and whilst she was insensible violated her person, it was held that this offence was committed.³

Passive non-resistance or consent obtained by fraud.—If a girl does not resist intercourse in consequence of misapprehension, this does not amount to a consent on her part. Where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no

¹ 1 Hawk. P. C., c. 16, s. 7, p. 122.

² *Camplin*, (1845) 1 Cox 220.

³ *Fletcher*, (1850) 3 Cox 131.

resistance from a *bona fide* belief that he was treating medically, it was held that he was guilty of rape.¹ The accused, who was engaged to give lessons in singing and voice production to a girl of sixteen years of age, had sexual intercourse with her under the pretence that her breathing was not quite right and that he had to perform an operation to enable her to produce her voice properly. It was held that he was guilty of rape.²

Fifth clause.—There may be cases in which the check of the law may be necessary to restrain men from taking advantage of their marital right prematurely. Instances of abuse by the husband in such cases will fall under this clause. The age limit was raised to fourteen years by Act XXIX of 1925, s. 2.

Explanation.—The only thing to be ascertained is whether the private parts of the accused did enter into the person of the woman. It is not necessary to enter into any nice discussion as to how far they entered.³

Exception.—The age limit was raised to thirteen years by Act XXIX of 1925, s. 2. A man cannot be guilty of rape on his own wife when she is over the age of thirteen years, on account of the matrimonial consent she has given which she cannot retract. But he has no right to enjoy her person without regard to the question of safety to her.⁴

Indecent assault is not attempt to commit rape.—Indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.⁵

English law.—A boy under fourteen years of age cannot be convicted of rape. The rule of common law is that in regard to the offence of rape *malitia non supplet aetatem*; a boy under fourteen is under a physical incapacity to commit the offence. This presumption has no application to India.⁶ A boy under fourteen can be convicted in England of an indecent assault under the Criminal Law Amendment Act.⁷

Corroboration of testimony.—In a case of rape it is generally unsafe to convict upon the uncorroborated testimony of the prosecutrix. It is open to a jury to convict without corroborating evidence, if they consider safe to do so, and it will not necessarily be illegal for a Court to do so if there are special circumstances justifying such a course.⁸ Where rape has been committed on a child of tender years there is no rule of law requiring corroboration from an independent source of the evidence of the child as to the identity of the accused.⁹

Of Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unnatural offences.

¹ *William Case*, (1850) 4 Cox 220.

² *Williams*, [1923] 1 K. B. 340.

³ *Allen*, (1839) 9 C & P. 81.

⁴ *Hurree Mohun Mythee*, (1890) 18 Cal. 49.

⁵ *Shankar*, (1881) 5 Bom. 403.

⁶ *Paras Ram*, (1915) 37 All. 187.

⁷ 48 & 49 Vic. c. 69, ss. 4, 9; *Williams*, [1892] 1 Q. B. 320.

⁸ *Surendranath Das*, (1933) 62 Cal. 534; *Conroy*, [1945] Nag. 232.

⁹ *Bishram*, [1945] Nag. 533.

*Explanation.** Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

COMMENT.—This section is intended to punish the offence of sodomy, buggery and bestiality. The offence consists in a carnal knowledge committed against the order of nature by a man with a man, or in the same unnatural manner with a woman, or by a man or woman in any manner with the beast.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

- | | |
|---|---|
| ✓1 Theft (s. 378). 1 | 7. { Receiving of Stolen Property (ss. 410-11). 7 |
| ✓2. Extortion (s. 388). 2 | 8. Cheating (s. 415). |
| ✓3. { Robbery (s. 390). 3 | 9. Fraudulent Deeds (ss. 421-424). |
| ✓4. { Dacoity (s. 391). 4 | 10. Mischief (s. 425). |
| ✓5. Criminal Misappropriation of Property (s. 403). 5 | 11. Criminal Trespass (s. 441). |
| ✓6. { Criminal Breach of Trust (s. 405). 6 | |

Of Theft.

378. Whoever, intending to take dishonestly¹ any moveable property² out of the possession of any person³ without that person's consent,⁴ moves that property⁵ in order to such taking, is said to commit theft.

*Explanation 1.**—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft: but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means, causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

ILLUSTRATIONS.

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(a) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

379. Whoever commits theft shall be punished with imprisonment

Punishment for theft. of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—The offence of theft under the Penal Code differs materially from the offence known as larceny in the English law.

Larceny is the wilful and wrongful taking away of the goods of another against his consent and with the intent to deprive him permanently of his property.

Differences between larceny and theft.—(1) Under larceny, the stolen property should be the property of some one; whereas under theft it should be in the possession of some one.

(2) Under theft, everything becomes its object which is moveable, i.e., capable of being severed from its place. Hence, it is theft to sever and remove things which are attached to the ground, such as trees, vegetables, etc. In larceny, no offence is committed if the objects removed "savour of the reality, and are, at the time they are taken, part of the freehold."

(3) Under larceny, it is necessary to show an intention to appropriate a chattel and exercise entire dominion over it. If it be taken with the intention of making a temporary use of it only, and then of letting the owner have it again, there is no larceny.¹ Under theft, it makes no difference that the person does not intend to assume entire dominion over the property taken, or to retain it permanently.

(4) Under larceny, it must be shown that the taking was against the person's consent and was not only wrongful and fraudulent, but was also "without any colour of right"; under theft, it will be sufficient to show that it was without his consent.

(5) To constitute theft it is not necessary to prove that the thief ever had the stolen thing in his power; but there can be no larceny even if there has been an actual removal, if the offender never had the thing in his power.

(6) Theft may be committed though the person from whom the thing is taken has no title thereto; in the case of larceny the alleged owner should have some (general or special) ownership of it, and it must have been taken out of the owner's actual or constructive possession.

Ingredients.—In order to constitute theft five factors are essential:—

- (1) Dishonest intention to take property;
- (2) the property must be movable;
- (3) it should be taken out of the possession of another person;
- (4) it should be taken without the consent of that person; and

¹ *Treblecock*, (1858) 27 L. J. M. C. 103.

(B) there must be some removal of the property in order to accomplish the taking of it.

1. 'Intending to take dishonestly.'—Intention is the gist of the offence. The intention to take dishonestly exists when the taker intends to cause wrongful gain to one person or wrongful loss to another person. Where, therefore, the accused, acting *bona fide* in the interests of his employers, finding a party of fishermen poaching on his master's fisheries, took charge of the nets and retained possession of them, pending the orders of his employers, it was held that he was not guilty of theft.¹ Where a respectable person just pinches away the cycle of another person as his own cycle at the time was missing, and brings it back and the important element of criminal intention is completely absent and he did not intend by his act to cause wrongful gain to himself it does not amount to theft.²

The intention to take dishonestly must exist at the time of the moving of the property [*vide ill. (h)*]. The taking must be dishonest. It is not necessary that the taking must cause wrongful gain to the taker, it will suffice if it causes wrongful loss to the owner.³ Thus, where the accused took the complainant's three cows against her will and distributed them among her creditors, he was found guilty of stealing.⁴ It makes no difference in the accused's guilt that the act was not intended to procure any personal benefit to himself. Could it be said that a servant would not be guilty of theft if he were to deliver over his master's plate to a pressing tailor, and tell him to pay himself? If the act done was not done *animo furandi*, it will not amount to theft. It is no more stealing than it will be to take a stick out of a man's hand to beat him with it.⁵

Taking need not be with intent to retain property permanently.—It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken [*vide ill. (l)*]. There may be theft without an intention to deprive the owner of the property permanently. In this respect the Penal Code differs from the English law. Where, therefore, a person snatched away some books from a boy as he came out of school and told him that they would be returned when he came to his house, it was held that he was guilty of theft.⁷

Bona fide dispute.—Where property is removed in the assertion of a contested claim of right, however ill-founded that claim may be, the removal thereof does not constitute theft.⁸ Where the question in dispute between two parties was whether the sale of a *mahal* (village) carried within its ambit the sale of certain trees and the servant of one of the parties cut and removed the trees under his master's orders under the *bona fide* belief that they belonged to his master, it was held that the servant was not guilty of theft.⁹ The dispute as to ownership must be *bona fide*. A mere colourable pretence to obtain or keep possession of property does not avail as a defence.¹⁰ It is not theft if a person, acting under a mistaken notion of law, and believing that certain property is his, and that he has the right to take the same,

¹ *Nobin Chunder Haldar*, (1866) 6 W. R. (Cr.) 79.

² *Rameshwar Singh*, (1936) 12 Luck. 92.

³ *Madra*, [1946] Nag. 326.

⁴ *Madare Chowkeedar*, (1865) 3 W. R. (Cr.) 2.

⁵ *Bailey*, (1872) L. R. 1 C. C. R. 347.

⁶ *Sri Churn Chungo*, (1895) 22

Cal. 1017, F.B.; *Nagappa*, (1890) 15 Bom. 344.

⁷ *Naushe Ali Khan*, (1911) 34 All. 89.

⁸ *Algarasawmi Tevan*, (1904) 28 Mad. 304.

⁹ *Ramsani*, (1943) 19 Luck. 399.

¹⁰ *Arjan Ali*, (1916) 44 Cal. 66; *Harnam Singh*, (1923) 5 Lah. 56.

until payment of the balance of some money due to him from the vendor, removes such property from the possession of the vendee.¹

Mistake.—When a person takes another man's property believing under a mistake of fact and in ignorance of law, that he has a right to take it, he is *not* guilty of theft because there is no dishonest intention, even though he may cause wrongful loss.² It is not theft if a person acting under a mistaken notion of law, and believing that certain property is his, and that he has the right to take the same, until payment of the balance money due to him from the vendor, removes such property from the possession of the vendee.³

Stealing one's own property.—A person can be convicted of stealing his own property if he takes it dishonestly from another: see *ills. (j) and (k)*. Where the accused took a bundle belonging to himself, which was in the possession of a police constable and for which the constable was accountable, it was held that the constable had special property in it and that therefore the accused was guilty of theft.⁴ The accused could have been excused only on the ground that he acted in an honest assertion, that is, in good faith, of his own right. But his furtive action excluded this supposition. He could not reasonably have supposed that he was legally warranted in taking possession as he did.

Liability of servant for act done at master's bidding.—A servant is not guilty of theft when what he does is at his master's bidding, unless it is shown that he participated in his master's knowledge of the dishonest nature of the acts. There must be some evidence from which such knowledge on the part of the servants can be inferred.⁵

Cases.—**Dishonest intention.**—The accused was the brother of a farmer or contractor of a public ferry. He seized a boat belonging to the complainant while conveying passengers across the creek which flowed into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat. It was held that he was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession.⁶ Where the accused was found to have loosed the complainant's cattle at night from a cattle pen, and to have driven them to the pound with the object of sharing with the pound keeper the fees to be paid for their release, it was held that he was guilty of theft.⁷ The accused, an employee of a steamer company, whose business it was to check the tickets of passengers, asked to see the complainant's ticket but the complainant not having got one, the accused took possession of his umbrella as security that he might be compelled to pay his fare. It was held that he was not guilty of theft.⁸ Where an electric kettle was given to a repairer for repairs, and he did not complete the work within the stipulated period, or even within a reasonable time thereafter, and the owner forcibly removed the article from the repairer's shop, without payment of the

¹ *Hamid Ali Bepari*, (1925) 52 974.
Cal. 1015.

² *Nagappa*, (1890) 15 Bom. 344.

³ *Hamid Ali Bepari*, *sup.*

⁴ *Shekh Husan*, (1887) Unrep. Cr. C. 343.

⁵ *Hari Bhutmah*, (1905) 9 C. W. N.

⁶ *Nagappa*, *sup.*

⁷ *Paryag Rai v. Arju Mian*, (1894) 22 Cal. 139.

⁸ *Matlabbar Shekh*, (1910) 14 C. W. N. 936.

sum demanded by the latter for work already done to it, it was held that the owner was not guilty of theft, as his intention was not to cause wrongful loss to the repairer, or wrongful gain to himself, within s. 24, but to recover his property after the lapse of a reasonable time.¹

Removal of debtor's property by creditor to enforce payment of debt.—A creditor who took movable property out of his debtor's possession, without his consent, with the intention of coercing him to pay his debt, was held to have committed theft.² The accused, a ship-owner, alleging that money was due to him on account of certain transactions with the complainant, seized the complainant's goods which were in transit to another ship-owner and detained them. It was held that he was guilty of theft.³ Where the accused, without the consent of the complainant who owed him Rs. 2, removed the complainant's two bullocks worth Rs. 65, which were grazing by the side of a stream, to his own house, and when the complainant asked him to release them told him that he would do so when the money was paid, it was held that the accused was guilty of theft.⁴

Obtaining cigarette from automatic box.—Against the wall of a public passage was fixed what is known as an 'automatic box,' the property of a company. In such box was a slit of sufficient size to admit a penny piece, and in the centre of one of its sides was a projecting button or knob. The box was so constructed that upon a penny piece being dropped into the slit and the knob being pushed in, a cigarette would be ejected from the box on to a ledge which projected from it. The accused dropped into the slit in the box a brass disc, about the size and shape of a penny, and thereby obtained a cigarette, which he took to the other accused. It was held that the accused were guilty of larceny.⁵

2. 'Moveable property.'—Explanations 1 and 2 state that things attached to the land may become moveable property by severance from earth, and that the act of severance may of itself be theft [*vide* ill. (a)]. Thus, the thief who severs and carries away is put in exactly the same position as if he carried away what had previously been severed. A sale of trees belonging to others and not cut down at the time of sale does not constitute theft.⁶ But removal of a man's trees blown down by a storm amounts to theft.⁷

It is not necessary that the thing stolen must have some appreciable value.

Cases.—Earth and stones.—Cart-loads of earth⁸ or stones⁹ quarried and carried away from the land of another are subject of theft.

Timber.—Extraction of teak timber without licence amounts to theft of Government timber.¹⁰

Salt.—Salt spontaneously formed on the surface of a swamp appropriated by Government,¹¹ or in a creek under the supervision of Government,¹² is subject of theft; but not that which is formed on a swamp not guarded by Government.¹³

¹ *Judah*, (1925) 53 Cal. 174.

⁷ *Dunyapat*, (1919) 42 All. 53.

² *Sri Churn Churngo*, (1895) 22 Cal.

⁸ *Shivram*, (1891) 15 Bom. 702.

1017, F.B., overruling *Prosonno Kumar*

⁹ *Suri Venkatappayya Sastri v.*

Patra v. Uday Sant, (1895) 22 Cal.

Madula Venkanna, (1904) 27 Mad.

660; *Agha Muhammad Yusuf*, (1895)

581, F.B.

18; All. 88; *Ganpat Krishnaji*, (1930)

¹⁰ *Yeok Kuk*, (1928) 6 Ran. 386.

32 Bom. L. R. 351.

¹¹ *Tamma Ghanthaya*, (1881) 4 Mad.

³ *U. Si Noor Mahomed*, (1883)

228.

Weir (3rd Edn.) 246.

¹² *Mansang Bhavsang*, (1873) 10

⁴ *Ganpat Krishnaji*, sup.

B. H. C. 74.

⁵ *Hands*, (1887) 10 Cox 188.

¹³ *Government Pleader*, (1882) 1 Weir

⁶ *Balos*, (1882) 1 Weir 410.

412.

Human body.—A human body whether living or dead (except bodies, or portions thereof, or mummies, preserved in museums or scientific institutions) is not moveable property.¹

Gas.—A, having contracted with a gas company to consume gas and pay according to meter, in order to avoid paying for the full quantity of gas consumed, introduced into the entrance pipe another pipe for the purpose of conveying the gas to the exit pipe of the meter and so to the burners, for consumption without passing through the meter itself. The entrance pipe was the property of A, but he had not by his contract any interest in the gas until it passed through the meter. It was held that A was guilty of larceny.²

Water.—Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of larceny.³ Water when conveyed in pipes and so reduced into possession can be the subject of theft;⁴ but not water running freely from a river through an open channel made and maintained by a person.⁵

Animals.—**Bull.**—A bull dedicated to an idol and allowed to roam at large is not *res nullius* (thing belonging to no one) but it remains the property of the trustees of the temple, and can become the subject of theft;⁶ but not a bull set at large in accordance with a religious usage.⁷

Peacock.—A peacock tamed but not kept in confinement is the subject of theft.⁸ So is the case with pigeons kept in dovecote and partridges.

Fish.—Fish in an ordinary open irrigation tank,⁹ or in a tank not enclosed on all sides but dependent on the overflow of a neighbouring channel,¹⁰ or in a public river or creek, the right of fishing in which has been let out,¹¹ are *feræ naturæ* and not subject of theft. If the water in an irrigation tank has gone so low as not to permit the fish leaving the tank then they may be subject of theft.¹² Similarly, fish in an enclosed tank are restrained of their natural liberty and liable to be taken at any time according to the pleasure of the owner, and are, therefore, subject of theft.¹³

3. 'Out of the possession of any person.'—The property must be in the possession of the prosecutor.¹⁴ Thus, there can be no theft of wild animals, birds, or fish, while at large, but there can be a theft of tamed animals. Similarly, where property dishonestly taken belonged to a person who was dead, and therefore in nobody's possession, or where it is lost property without any apparent possessor, it is not the subject of theft, but of criminal misappropriation [*vide ill. (g)*]. It is sufficient if property is removed against his wish from the custody of a person who has an apparent title, or even colour of right to such property.¹⁵

¹ *Ramadhin*, (1902) 25 All. 129. *heb*, (1900) 24 Mad. 81.

² *White*, (1858) 6 Cox 218.

³ *Ferens v. O'Brien*, (1883) 11 Q. B. D. 21.

⁴ *Mahadeo Prasad*, (1923) 45 All. 680.

⁵ *Sheikh Arif*, (1908) 35 Cal. 437.

⁶ *Nalla*, (1887) 11 Mad. 145.

⁷ *Romesh Chunder Sanyal v. Hiru Mondal*, (1890) 17 Cal. 852; *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 348.

⁸ *Nanke Khan*, (1897) 17 A. W. N. 41.

⁹ *Subba Reddi v. Munshoor Ali Sa-*

heb, (1900) 24 Mad. 81.
¹⁰ *Maya Ram Surma v. Nicholas Katani*, (1888) 15 Cal. 402.

¹¹ *Bhagiram Dome v. Abar Dome*, (1888) 15 Cal. 388.

¹² *Subbian Servai*, (1911) 36 Mad. 472.

¹³ *Shaik Adam*, (1886) 10 Bom. 193; *Nokolo Behara*, (1927) 51 Mad. 383.

¹⁴ *Hossene v. Rajkrishna*, (1878) 20 W. R. (Cr.) 80.

¹⁵ *Gangaram Santram*, (1884) 9 Bom. 185.

The authors of the Code remark: "We believe it to be impossible to mark with precision by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentleman's watch lying on the table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing-table or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guests, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is or that it is not in a person's possession."¹

A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may be presumed to intend to do so in case of need.²

'Any person.'—The person from whose possession the property is taken may or may not be the owner of it and may have his possession either rightful or wrongful. Mere physical control of the person over the thing is quite enough [*vide* *ills.* (j) and (k)].

Attachment.—Theft can be committed by the owner of property under attachment by removing it.³ The removal of crops standing on land attached and taken possession of by the Court under s. 145, Criminal Procedure Code, amounts to theft.⁴ Where a judgment-debtor, whose standing crops were attached, but-vested them while the attachment was in force, it was held that he could not be convicted of theft but of offences under ss. 424 and 408.⁵

Custody of receiver.—Where property has been taken possession of by a receiver in insolvency in the *bona fide* belief that it is property belonging to the insolvent, any person who takes such property from the possession of the receiver is guilty of theft, even though he may claim to be the owner thereof.⁶ The remedy of the true owner would be to move the Court under s. 68 of the Provincial Insolvency Act to reverse or modify the act or decision of the receiver, and not to take the law into his own hands.

Joint possession.—Where there are several joint owners in joint possession, and any one of them dishonestly takes exclusive possession, he would be guilty of theft.⁷ Similarly, if a coparcener dishonestly takes the separate property of another coparcener, it amounts to theft.⁸

Cases.—Taking out of the possession of another person.—The complainant washed a carpet at the village tank and hung it up there to dry. The accused dishonestly took the same away. It was held that the carpet had never left the complainant's possession, and this offence was committed.⁹ Where the complainant

¹ Note N, p. 159.

² Stephen's Digest of Criminal Law, Art. 308.

³ *Periyannan*, (1888) 1 Weir 423; *Chunnu*, (1911) 8 A. L. J. R. 656.

⁴ *Bande Ali Shaikh*, [1939] 2 Cal.

419.

⁵ *Obayya*, (1898) 22 Mad. 151.

⁶ *Kamla Pat*, (1926) 48 All. 368.

⁷ *Ponnurangam*, (1887) 10 Mad. 186.

⁸ *Sita Ram Rai*, (1890) 3 All. 181.

⁹ *Mathi*, (1880) Unrep. Cr. C. 314.

had an apparent title as tenant of the land together with long possession, and he had on the strength of this raised the crops which the accused removed, it was held that the accused was guilty of theft because he was not justified in taking the law into his own hands, even if he was entitled to hold the land, as he was not in actual possession of them.¹

Where a person takes a lorry on hire-purchase system from a company which under the agreement had reserved the right of seizing the bus in the event of default in payment of instalments, and default is made, then the company is not entitled to retake possession of the lorry by force or by removing it from the hands of the purchaser's servants who had no authority, express or implied, to give any consent. If the company or its agents do so they are guilty of an offence under this section. The question whether ownership had or had not passed to the purchaser is wholly immaterial as this section deals with possession and not ownership. The legal possession of the lorry was vested in the purchaser and the company were not entitled to recover possession of the lorry, even though default in payment of any instalments had taken place, without the consent of the purchaser. Possession of the driver and the cleaner was the possession of their master and they were not competent to give consent on behalf of the master.² A

4. 'Consent.'—The thing stolen must have been taken without the consent of the person in possession of it. Explanation 5 says that consent may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied [*vide* *ills. (m)* and *(n)*]. But the consent given under improper circumstances will be of no avail [*vide* *ill. (o)*].

Cases.—A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. It was held that as the property removed was so taken with the knowledge of the owner, theft was not committed, but A was guilty of abetment of theft.³ Really speaking, the owner did not consent to the dishonest taking away of the property. He merely assisted the thief in carrying out the latter's dishonest intention. Cf *ills. (m)*, *(n)* and *(o)*. The thief had no knowledge of the owner's act and it could not, therefore, be construed as a consent.

The accused suggested to a servant of the prosecutrix a plan for the commission of a robbery by the accused at the shop of the prosecutrix. The servant, pretending to agree to the accused's suggestion, lent the keys of the shop to the accused, who made duplicate keys, with one of which, on a day arranged with the servant, the accused unlocked a padlock attached to the outer door and entered the shop where he was arrested. The prosecutrix had been informed by the servant of the accused's plan and knew that he intended to enter the shop on the day in question. The accused was convicted on an indictment which charged him with having broken and entered the shop with intent to steal therein. It was held that 'the conviction was right notwithstanding that the prosecutrix knew that the appellant had been supplied with the means of breaking and entering by her servant.'⁴

Unauthorised consent.—Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself and a dishonest

¹ *Pandita v. Babi Mulla Akundo*, (1900) 27 Cal. 501.

² *Troyukho Nath Chowdhry*, (1878) 4 Cal. 366.

³ *H. J. Ransom v. Triloki Nath*, (1942) 17 Luck. 668.

⁴ *Chandler*, [1913] 1 K. B. 125.

removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, was held to constitute theft as consent was unauthorised and fraudulent.¹

5. 'Moves that property.'—The offence of theft is completed when there is a dishonest moving of the property, even though the property is not detached from that to which it is secured. The least removal of the thing taken from the place where it was before is a sufficient asportation though it be not quite carried off. It is not necessary that the property should have been removed out of its owner's reach or carried away from the place in which it was found. Upon this principle the guest, who having taken off the sheets from his bed with an intent to steal them carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny. So also was he, who having taken a horse in a close with intent to steal it, was apprehended before he could get it out of the close.²

Explanations 3 and 4 state how 'moving' could be effected in certain cases. Illustrations (b) and (c) elucidate the meaning of Explanation 4.

Cases.—The accused being in the employ of Government in the Post Office Department, while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery peon and sharing with him certain money payable upon them. It was held that he was guilty of theft and of an attempt to commit dishonest misappropriation of property.³ A Government correspondence in which accused Nos. 2 and 3 were interested was removed by accused No. 1 from the house of a clerk, with whom it was kept by his superior officer, during the absence of the clerk from his house without any one's consent. The correspondence was left for some time by accused No. 1 with the pleader of accused Nos. 2 and 3. Later accused No. 1 brought it back and stealthily replaced it from where it was taken. It was held that accused No. 1 was guilty of theft as he removed the correspondence without the consent of its custodian though such removal was temporary, and accused Nos. 2 and 3 were guilty of abetment of theft.⁴ Where the accused was found to have cut the string which fastened a neck ornament to complainant's neck and to have forced the ends of the ornament slightly apart in order to remove the same from her neck with the result that in the struggle that ensued between her and the accused it fell from her neck and was found on the bed later on, it was held that there had been a sufficient 'moving' of the ornament to constitute theft.⁵

Where the accused lifted up a bag from the bottom of a boot of a coach, but was detected before he had got it out, and it did not appear that it was entirely removed from the space it at first occupied in the boot, but he raising it from the bottom had completely removed each part of it from the space that specific part occupied, it was held that this was a complete asportation.⁶ Where the servant of a tallow-chandler removed fat belonging to his master from the room in which it was kept to a room where his master was accustomed to buy fat from persons who had it to sell, and placed it on a pair of scales there, with intent to sell it to his master, and appropriate the proceeds to his own use; this was held to be larceny.⁷ Pulling wool from the bodies of live sheep and lambs was held to be larceny.⁸

¹ *Hanmanta*, (1877) 1 Bom. 610. 1917.

² 2 East P. C. 555.

³ *Venkatasami*, (1890) 14 Mad. 229.

⁴ *Vallabhram*, (1925) 27 Bom. L. R. 1891.

⁵ *Bisakhi*, (1917) P. R. No. 29 of

⁶ *Walsh's Case*, (1824) 1 Mood. 14.

⁷ *Hall*, (1849) 3 Cox 245.

⁸ *Martin's Case*, (1777) 1 Leach 171.

6. **Explanations 1 and 2.**—The moving by the same act which effects the severance may constitute theft.¹ Carrying away of trees after felling them is theft,² but mere sale is not.³ In the case of growing grass, a moving by the same act which effects its severance from the earth may amount to theft.⁴

Where certain land, on which there was a standing crop of paddy, was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice to the factory people who would reap it, it was held that by cutting the crops themselves and disposing of the same, the accused had committed theft.⁵

Husband and wife.—Hindu law.—There is no presumption of law that husband and wife constitute one person in India for the purpose of criminal law. If the wife removes her husband's property from his house with dishonest intention, she is guilty of theft.⁶ A Hindu woman who removes from the possession of her husband, and without his consent, her *stridhan* (woman's property) cannot be convicted of theft because this species of property belongs to her absolutely.⁷ So also, a husband cannot be convicted of robbing his wife, the wife being completely under the control of her husband. He can be convicted if he steals his wife's *stridhan*.

Mahomedan law.—It is laid down that a Mahomedan wife may be convicted of stealing from her husband, because under this system of law, there does not exist the same union of interest between husband and wife which exists between an English husband and wife.⁸ The same reasoning would apply in the case of a Mahomedan husband.

English law.—There is such a unity of interest between husband and wife that ordinarily the wife cannot steal the goods of her husband, nor can an indifferent person steal the goods of the husband by delivery on the part of the wife; and if the wife deliver the goods of the husband to an indifferent person, for that person to convert them to his own use, this is no larceny; but if the person to whom the goods are delivered by the wife be an adulterer it is otherwise, and he can be properly convicted of theft even though they be delivered to him by the wife. If no adultery has actually been committed by the parties, but the goods of the husband are removed from his house by the wife and the intended adulterer with an intent that the wife should elope with him and live in adultery with him, this taking of the goods is, in point of law, a larceny.⁹ But as husband and wife are one person in law, the wife cannot steal her husband's goods whether she had committed adultery or not.¹⁰ But a person who receives money stolen by a wife from her husband will be punishable for misdemeanour under the Married Women's Property Act.¹¹

Necessitas inducit privilegium quo ad jura privata.—Where a man in extreme want of food or clothing steals either in order to relieve his present necessities the law allows no such excuse to be considered.

Single or several thefts.—Removal by one single act of several articles constitutes one offence of theft only although the articles belong to different persons.¹²

¹ (1870) 5 M. H. C. (Appx.) xxxvi.
² *Bhagu : Vishnu*, (1897) Unrep. Cr. C. 928.

³ *Balos*, (1882) 1 Weir 419.
⁴ *Samsuddin*, (1900) 2 Bom. L. R. 752.

⁵ *Durga Tewari*, (1909) 36 Cal. 758.

⁶ *Butchi*, (1898) 17 Mad. 401.

⁷ *Natha Kalyan*, (1871) 8 B. H. C. (Cr. C.) 11.

⁸ *Khatabai*, (1869) 6 B. H. C. (Cr. C.) 9.

⁹ *Tollett*, (1841) C. & M. 112.

¹⁰ *Kenny*, (1877) 2 Q. B. D. 307.

¹¹ *Payne*, [1906] 1 K. B. 97.

¹² *Krishna Shahaji*, (1897) Unrep. Cr. C. 927.

Restoration of stolen property.—The property stolen may be returned to the person from whom it was stolen under s. 517, Criminal Procedure Code, and an innocent purchaser may be compensated for the price paid under s. 519, if any money is found in the possession of the thief. But the property restored should be in existence at the time of theft. R's cow having been stolen, the thief after a lapse of a year and a half was convicted. Six months after the theft V innocently purchased the cow, which, while in his possession, had a calf. The Magistrate ordered that the cow and the calf should be delivered up by V to R. It was held that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal.¹

380. Whoever commits theft in any building,¹ tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—The object of the section is to give greater security to property deposited in a house, tent or vessel. Theft from a person in a dwelling-house will be simple theft under s. 379.²

1. 'Theft in any building.'—Building means a permanent edifice of some kind. Theft should, under the section, have been committed in any such building. Theft from a verandah,³ or the top of a house,⁴ or a brake-van,⁵ is not a theft in a building. But where the accused stole some luggage and cash from a railway carriage, when it was at a railway station, it was held that though the railway carriage was not a building, the railway station was, and the accused was therefore guilty under this section.⁶ An entrance hall surrounded by a wall in which there were two doorways but no doors which was used for custody of property, was held to be a building.⁷ A courtyard⁸ is, but a compound⁹ is not, a building.

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section provides for a severe punishment when a clerk or servant has committed theft because he has greater opportunities of committing this offence owing to the confidence reposed in him. When the possession of the stolen property is with the master, this section applies; when it is with the servant, s. 408 applies. Where some policemen stole a sum of money shut up in a box, and placed it in the Police Treasury building, over which they were mounting guard

¹ *Vernede*, (1886) 10 Mad. 25.

² *Tandi Ram*, (1876) P. R. No. 14 of 1876.

³ (1880) 1 Weir 435; contra, *Jabar*, (1880) P. R. No. 1 of 1881.

⁴ (1880) 1 Weir 435.

⁵ (1880) 1 Weir 436.

⁶ *Sheik Saheb*, (1886) Unrep. Cr. C. 298.

⁷ *Dad*, (1878) P. R. No. 10 of 1879.

⁸ *Ghulam Jelant*, (1889) P. R. No. 16 of 1889.

⁹ *Rama*, (1889) Unrep. Cr. C. 484.

as sentinels, they were held to have committed an offence under this section and not under s. 409.¹

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.

ILLUSTRATIONS.

(a) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(b) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

COMMENT.—The possession by a thief at the time of his committing theft of a knife or other weapon, which, if used on a human being, might cause death or hurt, would not of itself justify a conviction under this section. There must be something to show, or from which it may properly be inferred, that the offender made preparation for causing one or more of the results mentioned in the section.

If hurt is actually caused when a theft is committed the offence is punishable as robbery, and not under this section.² In robbery there is always injury. In offences under this section the thief is full of preparation to cause hurt but he may not cause it.

Of Extortion.

383. Whoever intentionally puts any person in fear of any injury¹ to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person² any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion."

ILLUSTRATIONS.

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain money to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

¹ *Juggurnath Singh*, (1865) 2 W. R. (Cr.) 55. ² *Hushrut Sheikh*, (1866) 6 W. R. (Cr.) 85.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

COMMENT.—This offence takes a middle place between theft and robbery.

Ingredients.—The section requires two things :—

- (1) intentionally putting a person in fear of injury to himself or another ;
- (2) dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

Theft and extortion.—Extortion is thus distinguished from theft—

- (1) Extortion is committed by the wrongful obtaining of consent. In theft the offender takes without the owner's consent.
- (2) The property obtained by extortion is not limited as in theft to movable property only. Immovable property may be the subject of extortion.
- (3) In extortion the property is obtained by intentionally putting a person in fear of injury to that person or to any other, and thereby dishonestly inducing him to part with his property. In theft the element of force does not arise.

1. 'Puts any person in fear of any injury.'—The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts that element of free voluntary action which alone constitutes consent.¹ Thus threatening to expose a clergyman, who had criminal intercourse with a woman in a house of ill-fame, in his own church and village, to his own bishop, and to the archbishop, and also to publish his shame in the newspapers was held to be such a threat as men of ordinary firmness could not be expected to resist.² The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, was held to be extortion.³

A refusal to allow people to carry away fire-wood collected in a Government forest without payment of proper fees;⁴ a payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded if the payment were refused;⁵ the obtaining of a bond under the threat of non-rendering of service as a vakil;⁶ and a refusal to perform a marriage ceremony and enter the marriage in the register unless the accused was paid Rs. 5,⁷ were held not to constitute extortion.

Threat of criminal accusation.—The terror of criminal charge, whether true or false, amounts to a fear of injury.⁸ The guilt or innocence of the party threatened is immaterial. Even the threat need not be a threat to accuse before a judicial tribunal, a threat to charge before any third person is enough.⁹

2. 'Deliver to any person any property.'—Delivery by the person put in fear is essential in order to constitute the offence of extortion. Where a person through

¹ *Walton*, (1863) 9 Cox 268.

² *Miard*, (1844) 1 Cox 22.

³ *Ameer Abbas Ali v. Omed Ali*, (1872) 18 W. R. 17.

⁴ *Abdul Kadar*, (1866) 3 B. H. C. (Cr. C.) 45.

⁵ (1880) 1 Weir 438, 440; *Habib-ul-Razzaq*, (1923) 46 All. 81.

⁶ (1870) 5 M. H. C. (Appx.) xiv.

⁷ *Nizam Din*, (1923) 4 Lah. 179.

⁸ *Mobarruk*, (1867) 7 W. R. (Cr.) 23.

⁹ *Robinson*, (1837) 2 M. & R. 14.

fear offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed will be robbery and not extortion.¹

'To any person.'—It is not necessary that the threat should be used, and the property received, by one and the same individual. It may be a matter of arrangement between several persons that the threat should be used by some, and property received by others; and they all would be guilty of extortion.²

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

COMMENT.—By this section a distinction between the inchoate and the consummated offence is recognized. The attempt to commit extortion may proceed so far as to put a person in fear of injury, or that there may be an attempt to excite such fear; but there may not be any delivery of property, etc. This section punishes the putting of a person in fear of injury in order to commit extortion.

The injury contemplated must be one which the accused can inflict, or cause to be inflicted. A threat that God will punish a man for some act is not such an injury. No injury can be caused or threatened to be caused unless the act done is either an offence or such as may properly be made the basis of a civil action.³

Cases.—A cloth-seller was threatened with the imposition of a fine if he continued to sell foreign cloth. He continued to sell such cloth, and, to enforce payment of the fine, his shop was picketed for two hours and he lost a certain amount of business and ultimately paid the fine. It was held that the person responsible for the picketing was guilty of an offence under this section as well as under s. 384.⁴ Where a mukhtar in a criminal case threatened, with intent to extort money, to put questions to prosecution witnesses which were irrelevant, scandalous and indecent, and which were intended to annoy and insult, it was held that he was guilty under this section.⁵ Where the accused wrote a postcard to the widow of a person, whose work he had executed, demanding the balance of money due to him, saying that if it was not paid through the Court it would be recovered from her husband in the next world, it was held that he was not guilty of an offence under this section as a threat that God would punish a man for some act was not an injury within the meaning of this section.⁶

386. Whoever commits extortion by putting any person in fear of death, or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

COMMENT.—If the fear caused is that of death or of grievous hurt it naturally

¹ *Duleeludeen Sheik*, (1866) 5 W. 146.
R. (Cr.) 19.

² *Shankar Bhagoat*, (1866) 2 B. H.

C. 394.

³ *Tanumat Udhasing*, [1944] Kar.

⁴ *Chatubhuj*, (1922) 45 All. 137.

⁵ *Fazlur Rahman*, (1929) 9 Pat.

725.

⁶ *Tanumat Udhasing*, sup.

causes great alarm, The section therefore provides for severe penalty in such cases.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

COMMENT.—The relation between this section and s. 386 is the same as that between s. 385 and s. 384.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine : and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

COMMENT.—It is immaterial whether the person against whom the accusation is threatened be innocent or guilty if the prisoner intended to extort money. The aggravating circumstance under this section is the threat of an accusation of an offence punishable with death, transportation for life, or with imprisonment for ten years. If the accusation is of unnatural offence then the penalty provided is severer.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

Putting person in fear of accusation of offence, in order to commit extortion.

COMMENT.—This sections bears the same relation to s. 388 as s. 385 bears to s. 384.

Of Robbery and Dacoity.

Robbery.

390. In all robbery there is either theft or extortion.

Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away¹ or attempting to carry away property obtained by the theft, the offender, for that end,² voluntarily causes³ or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

ILLUSTRATIONS.

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high-road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high-road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

COMMENT.—Robbery is a special and aggravated form of either theft or extortion. The chief distinguishing element in robbery is the presence of imminent fear of violence. The second para. distinguishes robbery from theft, the third distinguishes it from extortion.

Object.—The authors of the Code observe: "There can be no case of robbery which does not fall within the definition either of theft, or of extortion: but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them

to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, those in his turban by extortion. Probably in nine-tenths of robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though, in general, the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought, therefore, to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial."¹

The Explanation and illustrations (c) and (d) mark the distinction between simple extortion and extortion which is robbery. Illustration (a) indicates when theft is robbery.

1. 'Carrying away.'—Even if death, hurt, or wrongful restraint, or fear of any of these, is caused after committing theft, in order to carry away the property obtained by theft, this offence would be committed. According to English law the force which converts theft into robbery must be used before, or at the time of taking, and must be of such a nature as to show that it was intended to overpower the party robbed, and prevent his resisting and not merely to get possession of the property stolen.²

2. 'For that end.'—Death, hurt or wrongful restraint must be caused in committing theft, or in carrying away property obtained by theft. Where a person caused hurt only to avoid capture when surprised while stealing,³ it was held that theft, and not robbery, was committed. The use of violence will not convert the offence of theft into robbery, unless the violence be committed for one of the ends specified in this section. Where the accused abandoned the property obtained by theft and threw stones at his pursuer to deter him from continuing the pursuit it was held that the accused was guilty of theft and not of robbery.⁴

3. 'Voluntarily causes.'—These words denote that an accidental infliction of injury by a thief will not convert his offence into robbery. Thus, where a person while cutting a string, by which a basket was tied, with intent to steal it, accidentally cut the wrist of the owner who at the moment tried to seize and keep the basket, and ran away with it, it was held that the offence committed was theft and not robbery.⁵ But where in committing theft, there is indubitably an intention seconded by an attempt to cause hurt, the offence is robbery.⁶

CASES.—Where A and B were stealing mangoes from a tree, C surprised them, on which A knocked him down senseless with a stick;⁷ and where a person in snatching a nose-ring wounded a woman in the nostril and caused her blood to flow,⁸ this offence was held to have been committed.

¹ Note N, p. 102.

² *Thomas Gnostil*, (1824) 1 C. & P. 304.

³ *Kalio Kerio*, (1872) Unrep. Cr. C. 65.

⁴ (1865) 1 Weir 442; *Kalio Kerio*, sup.

⁵ *Edwards*, (1843) 1 Cox 32.

⁶ *Teekai Bheer*, (1866) 5 W. R. (Cr.) 95.

⁷ *Hushrut Sheikh*, (1866) 6 W. R. (Cr.) 85.

⁸ *Teekai Bheer*, sup.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity."

COMMENT.—Dacoity is robbery committed by five or more persons, otherwise there is no difference between dacoity and robbery. The gravity of the offence consists in the terror it causes by the presence of a number of offenders. Abettors who are present and aiding when the crime is committed are counted in the number.

Dacoity includes theft, and if no property is carried off there is no dacoity but an offence under s. 402.

In a case of dacoity the circumstance that the inmates of the house, seeing the large number of dacoits, do not offer any resistance and no force or violence is required or used does not reduce the dacoity to a theft.¹

CASES.—Dacoity must be either theft or extortion.—Where several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing wrongful gain to themselves or wrongful loss to the owner of the cattle but for the purpose of preventing the killing of the cows, it was held that they could not be convicted of dacoity but only of riot.² In a subsequent case the principle of this decision has been held to be limited to the particular facts of the case. Where a large body of Hindus acting in concert, and apparently under the influence of religious feelings, attacked certain Mahomedans, who were driving cattle along a public road, and forcibly deprived them of the possession of such cattle under circumstances which did not imply any intention of returning the cattle to the Mahomedans, it was held that they were guilty of dacoity.³

Fear of instant death, or of hurt, or of wrongful restraint.—Imminent fear of death, hurt, etc., will be sufficient to bring the section into operation. Where several persons attacked a house and took away property, but the inmates obtaining information beforehand fled before the attack, it was held that the fact of the inmates running away was sufficient proof of the fear of hurt or wrongful restraint and the accused were guilty of dacoity.⁴

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

COMMENT.—This section no doubt allows the Court discretion as regards the minimum punishment to be awarded, but when the offence is attended with circumstances which would make the attempt to commit it punishable with the mini-

¹ *Ram Chand*, (1932) 55 All. 117.

² *Raghunath Rai*, (1892) 15 All.

³ *Ram Baran*, (1893) 15 All. 299.

⁴ *Kissoree Patel*, (1867) 7 W. R. (Cr.) 35.

imum sentence of seven years, it would not be a proper exercise of discretion to award a lesser sentence when the offence has been accomplished.¹

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—This section imposes severe punishment when hurt is caused in committing robbery. Section 397 similarly provides for the minimum sentence of imprisonment which must be inflicted when grievous hurt is caused.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—Under this section extreme penalty of death may be inflicted on a person convicted of taking part in a dacoity in the course of which a murder is committed, even though there is nothing to show that he himself committed the murder or that he abetted it. The section declares the liability of other persons as co-extensive with the one who has actually committed murder. This section differs from s. 302 in this respect that whereas under s. 302 the rule is that a sentence of death should follow unless reasons are shown for giving a lesser sentence, no such rule applies to this section. So, where in the course of a dacoity one man was shot dead, and the accused person who was tried had a gun and others of the dacoits also had guns, and there was no evidence that the accused was the man who fired the fatal shot, the sentence was altered from one of death to one of transportation for life.²

Ingredients.—The offence under this section requires two things :—

- (1) The dacoity must be the joint act of the persons concerned.
- (2) Murder must have been committed in the course of the commission of the dacoity.

Presence of all not necessary.—The section says that if “any one of five or more persons, who are conjointly committing dacoity, commits murder in so

¹ Chandra Nath, (1931) 7 Luck. 543.

² Lal Singh, [1936] All. 875.

committing dacoity" then every one of those persons shall be liable to the penalty prescribed in the section. It is not necessary that murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed, it matters not whether the particular dacoit was inside the house where the dacoity is committed, or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity.¹ The house of a person was raided by a gang of five dacoits, one of whom was armed with a gun. The dacoits ransacked the house and made good their escape with their booty. A number of villagers had assembled outside the house and in fighting their way through the crowd one of the dacoits shot one man dead and inflicted fatal wounds upon another who died shortly afterwards. It was held that murder committed by dacoits while carrying away the stolen property was "murder committed in the commission of dacoity," and every offender was therefore liable for the murder committed by one of them.²

397.† If, at the time of committing robbery or dacoity, the offender uses any deadly weapon,¹ or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Robbery or dacoity,
with attempt to cause
death or grievous hurt.

COMMENT.—Sections 397 and 398 do not create any offence but merely regulate the punishment already provided for dacoity. This section fixes a minimum term of imprisonment when the commission of dacoity has been attended with certain aggravating circumstances, viz., (1) the use of a deadly weapon, or (2) the causing of grievous hurt, or (3) attempting to cause death or grievous hurt.

Section 34 of the Code has no application in the construction of this section.³

Accused must be armed with deadly weapon.—It is necessary to prove that at the time of committing robbery, the accused was armed with a deadly weapon and not merely that one of the robbers who was with him at the time carried one.⁴ The liability to enhanced punishment is limited to the offender who actually uses the weapon himself and causes grievous hurt and not to others who in combination with such person have committed robbery or dacoity.⁵ The section does not provide for constructive liability as s. 149.⁶

1. 'Uses any deadly weapon.'—These words are wide enough to include a case in which a person levels his revolver against another person in order to overawe him. It is not correct to say that a person does not use a revolver unless he fires it.⁷

The accused fractured one of the arms of a woman by striking one or two blows with a stick, and thereby causing her to fall to the ground, his object being to steal the pony on which she was riding. He then attempted to mount and ride off the pony but was prevented from doing so by the girth of the pony saddle breaking. It was held that he was guilty of an offence under this section.⁸

¹ *Teja*, (1895) 17 All. 86, *Umrao Singh*, (1894) 16 All. 437, dissented from; *Chittu*, (1900) P. R. No. 4 of 1900.

² *Lashkar*, (1921) 2 Lah. 275.

[†] In Burma, Burma Act IV of 1940, s. 1, has repealed the words "uses any deadly weapon or" from the section.

³ *Ali Mirza*, (1923) 51 Cal. 265; *Dulli*, (1924) 47 All. 50.

⁴ *Bhavjya*, (1895) Unrep. Cr. C. 797.

⁵ *Deoji Keru*, (1872) Unrep. Cr. C. 65; *Komali Viswasam*, (1886) 1 Weir 450; *Nageshwar*, (1906) 28 All. 404; *Ali Mirza*, sup.; *Dulli*, sup.

⁶ *Hazara Singh*, (1946) 25 Pat. 227.

⁷ *Chandra Nath*, (1931) 7 Luck. 543.

⁸ *Harnaman*, (1900) P. R. No. 6 of 1901.

398.† If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

COMMENT.—This section can regulate the punishment only in cases of an attempt to commit robbery as distinguished from a case in which the offender has accomplished his purpose and robbery has actually been committed.¹ It applies to such of the offenders as are armed with deadly weapons though they do not use them in the attempt to rob or commit dacoity. It does not apply to other offenders who in combination with such persons have committed robbery or dacoity.²

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

COMMENT.—This section makes preparation to commit dacoity punishable. 'Preparation' consists in devising or arranging means necessary for the commission of an offence.³

Under the Code preparation to commit an offence is punishable in three cases :—

- (1) Preparation to wage war against the King-Emperor (s. 122).
- (2) Preparation to commit depredation on territories of a Power at peace with the King (s. 126).
- (3) Preparation to commit dacoity.

In a popular sense assembling to commit dacoity may be an act of preparation for it, but a mere assembling, without further preparation, is not 'preparation' within the meaning of this section. Section 402 applies to mere assembling without proof of other preparation. A person may not be guilty of dacoity, yet guilty of preparation, and not guilty of preparation, yet guilty of assembling.⁴

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to gang of dacoits.

COMMENT.—This section provides for the punishment of those who belong to a gang of persons who make it their business to commit dacoity. Its object is to break up gangs of dacoits by punishing persons associated for the purpose of committing dacoity. The mere fact that women lived as wives or mistresses with men who were dacoits was held not sufficient to prove that they belonged to a gang of persons associated for the purpose of habitually committing dacoity within the meaning of this section, unless it be proved that the women themselves were associated

† This section has been repealed in Burma by Burma Act IV of 1940, s. 2.

¹ *Chandra Nath*, (1931) 7 Luck. 534.

² *Ali Mirza*, (1923) 51 Cal. 265; *Nabibuz*, (1927) 30 Bom. L. R. 88, 52

Bom. 168.

³ *Jain Lal*, (1942) 21 Pat. 667.

⁴ *Ramesh Chandra Banerjee*, (1913) 41 Cal. 350.

with the husbands or protectors for the purpose of themselves habitually committing dacoities.¹

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of *thugs* or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Punishment for belonging to gang of thieves.

COMMENT.—The principle enunciated in the last section is extended by this section to a gang of thieves or robbers. It is not necessary to prove that each individual member of the gang has habitually committed theft or has committed any particular theft in company with the other members.²

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

COMMENT.—An unlawful assembly of persons meeting for a common purpose to commit dacoity is subject to the severe punishment provided in this section even though no step is taken in the prosecution of the common object. Several persons were found at eleven o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. None of them had a license to carry arms, and none of them could give any reasonable explanation of his presence at the spot under the particular circumstances. At that period the district of Agra was notorious as the scene of frequent and recent dacoities. It was held that they were guilty under this section.³

Of Criminal Misappropriation of Property.

403. Whoever dishonestly misappropriates or converts to his own use¹ any moveable property,² shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest misappropriation of property.

ILLUSTRATIONS.

(a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

¹ *Yella*, (1896) Unrep. Cr. C. 868. 1914.

² *Beja*, (1914) P. R. No. 13 of ³ *Bholu*, (1900) 23 All. 124.

(c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

ILLUSTRATION.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

ILLUSTRATIONS.

(a) A finds a rupee on the high-road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person, who has drawn the cheque, appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

COMMENT.—Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.¹ The offence consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender.² See illustrations (a), (b) and (c) which show that the original innocent taking amounts to criminal misappropriation by subsequent acts. Illustration (a) is qualified by ill. (b).³

This section lays down a principle quite at variance with the English law, according to which the intention of the accused at the time of obtaining the possession of property is only taken into account. If the intention was not dishonest when the possession was obtained, subsequent change of intention does not convert the possession into an illegal one. According to English law, innocent taking followed by conversion, owing to subsequent change of intention, is a civil wrong but not an offence. Explanation 2 emphasizes the difference between the English law and the Code.

Ingredients.—This section requires—

- (1) Dishonest misappropriation or conversion of property for a person's own use.
- (2) Such property must be moveable.

1. '**Dishonestly misappropriates or converts to his own use.**'—There must be actual conversion of the thing misappropriated to the accused's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of this offence.⁴ Where the accused found a purse on the pavement of a temple in a crowded gathering and put it in his pocket but was immediately after arrested, it was held that he was not guilty of criminal misappropriation, for it could not be assumed that by the mere act of picking up the purse or putting it in his pocket he intended to appropriate its contents to his own use.⁵ Where a person took possession of a bullock which had strayed, but there was no evidence that it was stolen property, and he dishonestly retained it, he could be convicted under this section and not under s. 411.⁶ The accused purchased for one anna, from a child aged six years, two pieces of cloth valued at fifteen annas, which the child had taken from the house of a third person. It was held that, assuming that a charge of dishonest reception of property (s. 411) could not be sustained owing to the incapacity of the child to commit an offence, the accused was guilty of criminal misappropriation, if he knew that the property belonged to the child's guardian and dishonestly appropriated it to his own use.⁷

This section is in no way restricted to appropriating property to one's own use. If a trustee repudiates the trust and asserts that he holds the property on behalf of a person other than the one who entrusted him with it, he has misappropriated the property just as much as he would have been said to misappropriate it if he had been putting forward his own claims to it.⁸

¹ *Bhagiram Dome v. Abar Dome*, (1888) 15 Cal. 388, 400.

² *Ramakrishna*, (1888) 12 Mad. 40, 50.

³ *Mahadeo Govind*, (1930) 32 Bom. L. R. 356.

⁴ *Abdool*, (1868) 10 W. R. (Cr.) 23A.

⁵ *Phuman*, (1907) P. R. No. 11 of 1908.

⁶ *Phul Chand Dube*, (1929) 52 All. 200.

⁷ *Makhulshah*, (1886) 1 Weir 470.

⁸ *Indar Singh*, (1925) 48 All. 288.

2. 'Any moveable property.'—The misappropriation must be of moveable property. A bull set at large in accordance with Hindu religious usage is not 'property' of any one, and not the subject of ownership by any person, as the original owner has surrendered all his rights as its proprietor, and has given the beast its freedom to go whithersoever it chose.¹ Such a bull cannot be the subject of criminal misappropriation. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors.² But where a person took possession of a bullock which had strayed, and dishonestly retained it, it was held that he was guilty of criminal misappropriation.³

Explanation 2.—The word "misappropriation" is in the illustrations and in the Explanations to this section replaced by the expression "appropriates to his own use," which seems equivalent to "setting apart for his own use," to the exclusion of others. It does not, of course, follow from this that setting apart by one person for the use of some person other than himself and the true owner is not a misappropriation.⁴ A Hindu girl having picked up a gold necklet made it over to a sweeper girl. The accused, the brother of the finder, represented to the latter that the necklet belonged to a man of his acquaintance, and thus got possession of it from her. On enquiry by a police constable a few hours later, he repeated the representations, but afterwards gave up the necklet. These representations were found to be untrue to the knowledge of the accused. It was held that the accused was guilty of this offence.⁵

Theft and criminal misappropriation.—(1) In theft the offender dishonestly takes property which is in the possession of a person out of that person's possession; and the offence is complete as soon as the offender moves the property. Criminal misappropriation takes place even when the possession has been innocently come by, but where, by a subsequent change of possession or from the knowledge of some new fact, with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent.

(2) The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must in criminal misappropriation be carried into action by an actual misappropriation or conversion.

Temple property.—The property of an idol or a temple must be used for the purposes of that idol or temple; any other use would be a malversation of that property, and, if dishonest, would amount to criminal misappropriation.⁶

Retention of money paid by mistake.—Where money is paid to a person by mistake, and such person, either at the time of receipt or at any time subsequently, discovers the mistake, and determines to appropriate the money, that person is guilty of criminal misappropriation.⁷ In England the law is doubtful on this point.⁸

¹ *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 348.

² *Romesh Chunder Sannyal v. Hiru Mondal*, (1890) 17 Cal. 852.

³ *Phul Chand Dube*, (1929) 52 All. 200.

⁴ *Ram Dyal*, (1886) P. R. No. 24 of 1886.

⁵ *Ibid.*

⁶ *Gadgayya v. Gurus Siddeshwar*, (1897) Unrep. Cr. C. 919.

⁷ *Shamsoondur*, (1870) 2 N. W. P. 475.

⁸ *Middleton*, (1873) L. R. 2 C. C. R. 38; *Ashwell*, (1885) 16 Q. B. D. 190.

Joint property.—Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it, and disposes of it.¹ No coparcener in a joint Hindu family having before devision a right in or to any specified share in any particular item of the family property, a prosecution for dishonest misappropriation cannot lie against the managing coparcener until accounts have been taken and shares allotted.²

Explanation 1.—This Explanation refers only to cases in which there is a “dishonest misappropriation” and explains that the section includes temporary as well as permanent misappropriation of that description.³

Explanation 2.—There can be no criminal misappropriation of things which have actually been abandoned.⁴ To render a person guilty of misappropriating a property it must have been owned by some one.

In England, where property is cast away or abandoned, any one finding and taking it acquires a right to it, which will be good even as against the former owner, if the latter should be minded to resume it, but when a thing is accidentally lost, the property is not divested, but remains in the owner who loses it.⁵ The law seems to be that if a man finds goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them, with intent to take the entire dominion over them, really believing when he takes them that the owner cannot be found, it is not larceny. But if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny.⁶

CASES.—**Servant receiving money on behalf of master.**—A servant, who retained in his hands money which he was authorised to collect, and which he did collect, from the debtor of his master, because money was due to him as wages, was held guilty of criminal misappropriation.⁷ Where the accused, a Government servant, whose duty it was to receive certain money and to pay it into treasury on receipt, admitted that he had retained two sums of money in his possession several months, but on fearing detection he paid them into the treasury, making a false entry at the time in his books with a view to avert suspicion, it was held that he was guilty of this offence.⁸

Secreting letters.—The accused, a servant in the Postal Department, while assisting in the sorting of letters, secreted two letters, with the intention of handing them over to the delivery peon and sharing with him certain moneys payable upon them, it was held that the accused was guilty of attempt to commit dishonest misappropriation of property and of theft.⁹

Harvesting crops under attachment.—Where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force he was held guilty of this offence.¹⁰

¹ *Parbutty Churn Chuokerbutty*, (1870) 11 W. R. (Cr.) 13.

² (1880) 1 Weir 453; *Pania*, (1881) 1 A. W. N. 89.

³ *Jhandu*, (1886) P. R. No. 27 of 1886.

⁴ *Bandhu*, (1885) 8 All. 51; *Nihal*, (1887) 9 All. 848; *Romesh Chunder Annayal v. Hiru Mandal*, (1890) 17 al. 552; *Sita*, (1893) 18 Bom. 212.

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⁵ *Glyde*, (1868) L. R. 1 C. C. R. 139, 140, 144.

⁶ *Thurborn*, (1849) 18 L. J. (M. C.) 140.

⁷ *Bissessur Roy*, (1869) 11 W. R. (Cr.) 51.

⁸ *Ramakrishna*, (1888) 12 Mad. 40.

⁹ *Venkatasami*, (1890) 14 Mad. 239.

¹⁰ *Obayya*, (1898) 22 Mad. 151.

Exchanging railway tickets.—A and B were about to travel by the same train from Benares city. A had a ticket for Ajudhia. B had two tickets for Benares Cantonment. A voluntarily handed over her ticket to B in order that he might tell her if it was right. B, under the pretence of returning A's ticket, substituted therefor one of his own, and kept A's ticket. It was held that B was guilty of criminal misappropriation rather than cheating.¹

Explanation 2.—Property found on open plain.—Where the accused found a gold mohur (sovereign) on an open plain, and sold it the next day to a shroff for its full value and appropriated the sale proceeds, it was held that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation.² Where the accused found a spanner of no appreciable value in a public road and attempted to sell it, it was held that he was not guilty of criminal misappropriation as his case came under ill. (a).³

404. Whoever dishonestly misappropriates or converts to his own use property,¹ knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by deceased person at the time of his death.

ILLUSTRATION.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

COMMENT.—This section relates to a description of property peculiarly needing protection. The offence consists in the pillaging of movable property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person or officer authorized to take charge of it.⁴

1. 'Property.'—The Bombay High Court has held that the word 'property' does not refer to immovable property, but only to movable property. Hence, where a person was convicted of misappropriating the house of a deceased person, the conviction was annulled.⁵ The Allahabad High Court has dissented from this view. It lays down that this section contains no such express limitation. This section and some of the other sections following it refer to property without any qualifying description; and in each the context must determine whether the

¹ *Raza Hussain*, (1904) 25 A. W. L. R. 356.
N. 9.

⁴ *M. & M.* 364.

² *Sita*, (1893) 18 Bom. 212.

⁵ *Girdhar Dharamdas*, (1869) 6 B. H. C. (Cr. C.) 33.

³ *Mahadev Govind*, (1930) 32 Bom. C. (Cr. C.) 33.

property referred to is intended to be moveable property or property moveable or immoveable. Where the accused in order to obtain a wrongful gain to the prejudice of a decree-holder whose decree was still pending, removed some rafters from a house which was in the possession of a deceased person at the time of her death and had not since been in the possession of any person legally entitled to it, it was held that the accused were guilty of an offence under this section. The property removed by the accused was immoveable property so long as it was attached to the house but became moveable property when it was severed from the house.¹

Of Criminal Breach of Trust.

405. Whoever, being in any manner entrusted with property,¹ or ^{Criminal breach of trust.} with any dominion over property, dishonestly misappropriates² or converts to his own use that property, or dishonestly uses or disposes of that property³ in violation of any direction of law prescribing the mode in which such trust⁴ is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

ILLUSTRATIONS.

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

¹ *Daud Khan*, (1925) 24 A. L. J. R. 158.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for criminal breach of trust.

COMMENT.—To constitute this offence there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The offence of criminal breach of trust closely resembles the offence of embezzlement under the English law. Offences committed by trustees with regard to trust property fall within the purview of this section.

Ingredients.—The section requires—

- (1) Entrusting any person with property or with any dominion over property.
- (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or
- (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
 - (ii) of any legal contract made touching the discharge of such trust.

This offence consists of any one of four positive acts, namely, misappropriation, conversion, user, or disposal of property. Neither failure to account nor breach of contract, however dishonest, is actually and itself the offence of criminal breach of trust.¹

The section does not require that the trust should be in furtherance of any lawful object. Offences committed by trustees with regard to trust property fall within the purview of this section. 'Negligence or other misconduct causing the loss of trust property may make the person entrusted civilly responsible, but will not make him guilty of criminal breach of trust.'

Criminal misappropriation and criminal breach of trust.—In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same, or wilfully suffers any other person so to do, instead of discharging the trust attached to it.

1. 'Being in any manner entrusted with property.'—The word 'entrusted' is not a term of law. In its most general significance all it imports is a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all.² The natural meaning of 'entrusted' involves that the assured should by some real and conscious volition have imposed on the person, to whom he delivers the goods, some species of fiduciary duty.³ A person who obtains possession of property by a trick cannot be deemed to have been entrusted with property within the meaning of this section. A trust implies confidence placed by one man in another. It implies necessarily that the confidence was freely given and that there is a true consent. There is no true consent if confidence is obtained as a result of a trick.

¹ *Daityari Tripatti v. Subodh Chandra Simmons*, [1927] A. C. 487.
² *Chaudhari*, [1942] 2 Cal. 507.

³ Per Lord Sumner in *ibid*.

⁴ Per Lord Haldane in *Lake v.*

If there was trick there could be no true entrustment. Where the accused obtained utensils representing that he was a tinner and would return the utensils on the very day after repairing them, but he did not return the utensils and it was found that he was not a tinner, it was held that he was guilty of cheating and not of criminal breach of trust.¹ The complainant executed a hand-note in favour of the accused and also pawned ornaments with him. The accused then evaded settlement of account and return of the hand-note and the ornaments, and so *panchas* settled the total dues at Rs. 155 which the complainant paid, but the accused on the pretext of bringing the document from inside the house bolted away. He was charged with criminal misappropriation of the sum of Rs. 155. It was held that there was no breach of trust because there was no entrustment, the money was not given in trust, but in discharge of a debt, and the money became the accused's property as soon as he received it.²

'Property.'—Criminal breach of trust cannot be committed in respect of immovable property,³ e.g., standing teak.⁴ But the offence of criminal breach of trust is committed not only by dishonest conversion, but also by dishonest use or disposition, and there is nothing in the wording of this section to exempt from the definition of criminal breach of trust dishonest use of immovable property by the person entrusted with dominion over it.

A cancelled cheque comes within the term 'property.'⁵

The word 'property' includes the sale proceeds of goods entrusted to the accused.⁶

Dominion over property.—The property regarding which the offence is alleged to have been committed must have been 'entrusted' to the accused or he must have 'dominion' over it. Where it is the duty of a Municipal Water Works Inspector to supervise and check the distribution of water from the Municipal Water Works, he has dominion over the water belonging to his employers. If he deliberately misappropriates such water for his own use or for the use of his tenants for which he pays no tax and gives no information to his employers he is guilty of criminal breach of trust.⁷

2. 'Dishonestly misappropriates.'—Dishonest intention is the gist of the offence. If a person admits the appropriation alleging a right in himself, no matter how unfounded, or sets up an excuse, no matter how frivolous, this offence is not committed. A bare refusal by the accused to allow the removal of a box left in his house by the complainant, unless some debt due to him by the complainant is paid, does not amount to criminal breach of trust.⁸

Willful omission to account.—If a person receives money which he is bound to account for and does not do so, he commits this offence, although no precise time can be fixed at which it was his duty to pay over the money.⁹ If a servant, immediately on receiving a sum for his master, enters a smaller sum in his master's books, and ultimately accounts to his master for the smaller sum, he may be con-

¹ *Kundan Tillumal*, [1942] Kar. 288.

² *Hitnarain v. Bednarain*, (1944) 24 Pat. 128.

³ *Jugdown Sinha*, (1895) 23 Cal. 372; *Bhagu: Vishnu*, (1897) Unrep. Cr. C. 928.

⁴ *U Ka Doe*, (1929) 8 Ran. 13.

⁵ *Maula Baksh*, (1904) 27 All. 28.

⁶ *Balthasar*, (1914) 41 Cal. 844. The head-note of this case is inaccurate: vide *Dwarkadas Haridas*, (1928) 30 Bom. L. R. 1270.

⁷ *Bimala Charan Roy*, (1918) 35 All. 361.

⁸ *Adinarayana Iyer*, (1907) 17 M. L. J. 413.

⁹ *Welch's Case*, (1846) 1 Den. 199.

sidered as embezzling the difference at the time he makes the entry. It will make no difference though he received other sums for his master the same day, and in paying those and the smaller sum to his master together he might give his master every piece of money or note he received at the time he made the false entry.¹

The position of a shroff of a battery with reference to the custody of Government moneys entrusted to him being that of a cashier, his failure to produce the entire amount of the balance of cash entrusted to him amounts to criminal breach of trust.² If a public servant in his capacity as such receives money on a certain date and does not include it in his cash balance entered in the register which he is required to maintain, there is very strong *prima facie* evidence of the money having been misappropriated on that date, and he is guilty of embezzlement if he does not hand over to his successor the money in his hands due to Government.³

3. 'Dishonestly uses or disposes of that property.'—A user of property comes within this definition when such user causes substantial or appreciable loss to the owner of the property or gain to the accused. The use by a printer of certain blocks entrusted to him to print the complainant's catalogue for the purpose of printing a rival firm's catalogue amounts to criminal breach of trust.⁴ The Madras High Court has,⁵ however, held that for either wrongful loss or gain the property must be lost to the owner or the owner must be wrongfully kept out of it. The deterioration of an article, such as a turban, by use on the part of the person to whom it is pledged, is not such a loss of property to its owner and such a gain to the pledgee as to amount to this offence.⁶

4. 'Trust.'—A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of another, or of another and the owner.⁷ Hence, where there is no original confidence, there is no trust, and a misappropriation, if punishable at all, will be under s. 403.

Partner.—The words of the section are wide enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and has dishonestly misappropriated it or converted it to his own use.⁸

Wife.—A woman has a joint possession of her husband's property and cannot, therefore, be indicted for disposing of it in any way.⁹ According to English law she can be convicted of larceny as a bailee.¹⁰

Pledgee.—A person who pledges what is pledged to him may be guilty of this offence.¹¹ The accused, in the regular course of his money-lending business, effected sub-pledges of the same jewels, for the same amounts and on the same dates as the pledges made to him, with his financiers or *khatadars* to raise capital at a lower rate of interest. There was no express contract taking away the right to make sub-pledges and there was no evidence to show that the sub-pledges were made

¹ *Hall's Case*, (1821) Russ. & Ry. 463.

² *Hira Lal*, (1907) P. R. No. 19 of 1908.

³ *Daya Shankar*, (1926) 1 Luck. 345.

⁴ *Keshab Chandra Boral v. Nityamund Biswas*, (1901) 6 C. W. N. 203.

⁵ (1866) 3 M. H. C. (Appx.) vi.

⁶ Indian Trusts Act, II of 1882, s. 5.

⁷ *Okhoy Coomar Shaw*, (1874) 13 Beng. L. R. 307, F.B.; *Lalloo Ghella*, (1904) 6 Bom. L. R. 553; *Debi Prasad Bhagut v. Nagar Mull*, (1908) 35 Cal. 1108; *Jagannath*, (1931) 33 Bom. L. R. 1518; *Bhupendranath Singha v. Giridharilal Nagar*, (1933) 60 Cal. 1316.

⁸ (1864) Weir, 3rd Edn., 266.

⁹ *Jane Robson*, (1861) 31 L. J. (M. C.) 22.

¹⁰ (1871) 6 M. H. C. (Appx.) xxviii.

with a dishonest intention. It was held (1) that the accused was not guilty of criminal breach of trust; (2) that even if the accused had no right to make the sub-pledge, he must be deemed to have acted honestly under a mistaken belief as to the extent of his rights as pledgee, and the sub-pledges of the pledged goods could not, in the circumstances, be regarded as amounting to criminal breach of trust.¹

Disputed claims.—A person cannot be convicted of criminal breach of trust on refusing to give to the complainant money, which is claimed by another person as well as by the complainant, and which that person denies is due to the complainant.²

CASES.—Breach of trust.—Where the accused were entrusted with some silver for the purpose of making ornaments and they introduced copper into the ornaments;³ and where a Magistrate made over a pony, which had been condemned by the Municipal authorities as unfit for work, to a person professing to be the Secretary of a Society for the maintenance of incurable animals, and the Secretary afterwards sold it to a fly driver⁴ this offence was held to have been committed.

A servant of a liquor contractor was entrusted with liquor by his master for selling. For selling it, he was to receive a certain quantity himself, and he was to account for the remainder to his master, with whom he had made a legal contract that he would not adulterate it with water before selling it. In violation of that contract he mixed water with the liquor, and, having thus increased its quantity, sold it at the same rate per gallon as was chargeable for unadulterated liquor, and appropriated the profit thus made to his own use. It was held that, having thus gained by unlawful means money to which he was not legally entitled, he acted dishonestly, and was guilty under this section.⁵ The accused was entrusted with a pair of earrings for the purpose of raising Rs. 7 only upon them for the complainant's use; but he pledged them for a larger sum, gave Rs. 7 to the complainant and applied the additional money to his own use without telling him what he had done. It was held that he was guilty of criminal breach of trust.⁶

The manager of a bank received Government Promissory Notes from a constituent as security for overdrafts granted to the latter. Before the overdrafts were satisfied the manager returned the Promissory Notes, though shown in the books of the bank as still deposited there, to the constituent and he re-pledged them with other banks. It was held that the manager was guilty of criminal breach of trust and the constituent of abetment thereof.⁷

Violation of legal contract.—The accused hired a motor car of the complainant company under a hire-purchase system, which provided that until the car was fully paid for by the accused the car was to remain the "absolute property of the company"; and the accused agreed during the hiring "not to assign, underlet or part with the possession" of the car in any way. Whilst the agreement was in force the accused pledged the car to three different persons on three different occasions. It was held that the accused was guilty of criminal breach of trust as the pledging of the car by him was a violation of the legal contract made by

¹ *Nemichand Parakh*, (1938) Mad. N. 197.

639.

² *Raj Kishore Pattar v. Joy Krishna Sen*, (1900) 28 Cal. 362.

³ *Babaji Bhau*, (1867) 4 B. H. C. (Cr. C.) 16.

⁴ *Gauri Shankar*, (1894) 14 A. W.

⁵ *Jamsatji*, (1888) Unrep. Cr. C.

395.

⁶ *Gurumahanty Appalasamy*, (1894)

1 Weir 464.

⁷ *Sailendra Nath Mitter*, [1948] 1 Cal. 493.

him in regard to the hire of the car and that violation amounted to dishonesty.¹ In a similar case where the accused sold a motor lorry hired under a "hire-purchase agreement," the Allahabad High Court held that he was guilty under this section.² Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them and paid cash in full for certain articles and in part for others, the trust continues till the option is exercised and cash payments made, and he commits criminal breach of trust if he sells them without such payments.³

407. Whoever, being entrusted with property as a carrier,¹ whar-finger² or warehouse-keeper,³ commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—Those who receive property under a contract, express or implied, to carry it or to keep it in safe custody are punishable under this section for a criminal breach of duty with respect to such property.

1. 'Carrier.'—A carrier is a person who undertakes to transport the goods of other persons from one place to another for hire.⁴ Any one who undertakes to carry the goods of all persons indifferently for hire is a common carrier.⁵

Jurisdiction.—Where the accused was entrusted with the carriage of a quantity of coffee from an estate in Mysore to a firm of merchants in Mangalore, and a portion of the goods was abstracted and there was no evidence as to when or where such abstraction took place, it was held that the Magistrate at Mangalore had jurisdiction to try the accused as there was failure to deliver the goods at Mangalore in accordance with the terms of entrustment.⁶

2. 'Wharf-finger.'—A wharf-finger is one who owns or keeps a wharf, which is a broad plain place near some creek or haven, to lay goods and wares on that are brought to or from the water.⁷

3. 'Warehouse-keeper.'—A warehouse-keeper is one who keeps a warehouse, which is a house to deposit or keep wares in. Ware is an article of merchandise, abric, especially in the plural, goods, commodities, merchandise.

408. Whoever, being a clerk¹ or servant² or employed as a clerk or servant,³ and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—Section 881 punishes theft by a clerk or a servant. This section inflicts enhanced punishment on such a person for criminal breach of trust. The property must have been entrusted to the accused in his capacity of a clerk or a servant. A clerk or a servant who takes his master's property is punishable for theft.

¹ *Moses*, (1915) 17 Bom. L. R. 670.

² *C. J. Cadd*, (1923) 45 All. 588.

³ *Khitish Chandra Deb Roy*, (1924) 51 Cal. 796.

⁴ Wharton, 14th Edn., p. 164.

⁵ *Gisbourn v. Hirst*, (1710) 1 Salk. 240.

⁶ *Public Prosecutor v. Podimounu Beary*, (1928) 52 Mad. 61.

Wharton, 14th Edn., p. 1064.

1. 'Clerk'.—A clerk in modern usage means a writer in an office, public or private, either for keeping accounts or entering minutes.

2. 'Servant'.—Master and servant—a relation whereby a person calls in the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose.¹

3. 'Employed as a clerk or servant.'—If a person acts as a clerk or servant although there is no contract binding on him to work, yet so long as he does the duties he will come under the category of a clerk or a servant.²

Where a servant fails to render accounts and to deliver up the moneys realised by him in spite of repeated demands, he uses the property entrusted to him in violation of the legal contract made by him with his master and is thus guilty of an offence under this section.³ This is not a case of accounting and the servant is criminally as well as civilly liable to his master.⁴ Security deposit by an employee is a sum which the employer is entitled to retain as long as it is necessary to secure him against losses which may be occasioned by the employee's default. This would usually be until accounts between the employer and the employee have been adjusted. During such period no one, not even the employee who has made the deposit, may deprive the employer of his right to retain the amount deposited. The surreptitious withdrawal by the employee of his security deposit before accounts have been adjusted amounts to criminal breach of trust on the part of the employee.⁵ If a servant receive money on his employers' account and embezzles it, he is guilty of a felony, though his employers have no right to it, and are wrong-doers in receiving it.⁶

Where the accused, who was a paid supervisor of a society connected with the co-operative movement, debited Rs. 2 as the pay of a sweeper woman, took the thumb impression of his nephew against the debit entry, certified the thumb impression to be that of the sweeper woman, and appropriated the amount to himself, it was held that the accused was guilty of criminal breach of trust, as he misappropriated the amount, of forgery under s. 467, as he caused to be affixed to the debit entry the thumb impression of his nephew, and of falsification of accounts under s. 477A as he made a false debit entry.⁷

Commission obtained by servant on payment.—With respect to cases where a servant, employed to pay a bill for his master, obtains a commission or a reduction of price for his own benefit, the law has been thus laid down : "If the account is an *open* one, that is, an account of which the items have never been checked or settled, and if the transaction amounts to a taxation of the bill and a reduction of the price by the servant, it is obvious that the servant obtains the reduction for his master; that the money in his hands always remains the master's property, and that if he appropriates it, he steals it. But if the master himself has *settled* the account with the tradesman for a specific sum, and he sends the servant with the money, and the servant, after making the payment, asks the tradesman for a present, then, if the servant takes the present and keeps it, he is not guilty of stealing, because he has no intention to steal; the money is given to him by a person whom he believes to have a right to give it. It may be that, according to the strict equitable doctrines of the Court of Chancery, the servant is bound to

¹ Wharton, 14th Edn., p. 641. 353.

² Foulkes, (1875) L. R. 2 C. C. R. 150.

³ Brij Kishore v. Pandit Chandrika Prasad, (1936) 12 Luck. 77.

⁴ Wazir Singh, (1941) 17 Luck. 1120.

⁵ Surendra Nath Basu, [1938] 2 Cal. 257.

⁶ Beacall, (1824) 1 C. & P. 454.

⁷ Keshavrao, (1934) 36 Bom. L. R.

account to his master for the money. But, however this may be, his act is a very different matter from a criminal offence, and . . . he cannot be convicted of criminal breach of trust merely because, by a mere equitable doctrine of the Court of Chancery, it was obligatory upon him to render an account."¹

The accused who was a Vice-President of a Municipality had received certain commission from a firm on the purchase of certain goods made by the Municipality. The commission was paid to him personally. It was held that there being no trust, the accused was not guilty of an offence under this section.²

Appropriation by servant of property ordered to be destroyed.—The accused, a servant, was ordered by his employers to take certain bags of papers and forms belonging to them to their yard and there to burn and destroy them. Instead of doing this, the accused carried the papers away to a certain place. It was held that the act of the accused did not amount to this offence.³ This decision is of doubtful authority. The employers remained owners of the bags until destruction and failure to carry out their order would be an offence of criminal breach of trust.

409. Whoever, being in any manner entrusted with property,¹ or with any dominion over property in his capacity of a public servant² or in the way of his business as a banker,³ merchant,⁴ factor,⁵ broker,⁶ attorney⁷ or agent,⁸ commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—This section classes together public servants, bankers, merchants, factors, brokers, attorneys and agents. As a rule the duties of such persons are of a highly confidential character, involving great powers of control over the property entrusted to them; and a breach of trust by such persons may often induce serious public and private calamity.

The section cannot be construed as involving that any head of an office who is negligent in seeing that the rules about remitting money to the treasury are observed is *ipso facto* guilty of criminal breach of trust; but something more than that is required to bring home the dishonest intention. There should be some indication which justifies a finding that the accused definitely had the intention of wrongfully keeping Government out of the moneys.⁴ Where, under the rules, a public servant is required to lodge in the treasury any Government money in excess of that shown due to Government by the registers in his hands and the public servant removes the excess from the office cash-box, he is guilty of misappropriation.⁵

1. 'Property.'—Moneys paid to a Postmaster for money-orders are public money; as soon as they are paid they cease to be the property of the remitters, and a misappropriation of such moneys will fall under this section.⁶

¹ Per Petheram, C. J., in *Imdad Khan*, (1885) 8 All. 120, 138.

² *U. Maung Gale*, (1926) 4 Ran. 128.

³ *Preo Nath Chowdhry*, (1902) 29 Cal. 489.

⁴ *Lala Raoji*, (1928) 30 Bom. L. R. 624.

⁵ *Daya Shankar*, (1926) 1 Luck. 345.

⁶ *Juala Prasad*, (1884) 7 All. 174. F.B.

2. 'In his capacity of a public servant.'—It is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity.¹

3. 'Banker.'—A banker is one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honouring the customer's cheques upto the amount of the money received and still in the banker's hands.² The word 'banker' includes a cashier or shroff.³

4. 'Merchant.'—A merchant is one who traffics to remote countries; also any one dealing in the purchase and sale of goods.⁴

5. 'Factor' is a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him or for his principal, for a compensation commonly called factorage or commission.⁵

6. 'Broker' is an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation, by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally. More commonly he is an agent employed by one party to make a binding contract with another.⁶

A factor is entrusted with the possession as well as the disposal of property; a broker is employed by contract about it without being put in possession.⁷

7. 'Attorney' is one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated.⁸

8. 'Agent' is a person employed to do any act for another, to represent another, in dealing with third persons.⁹ The trustee of a temple is an agent of the deity, and if he misappropriates temple jewels he is guilty under this section.¹⁰ Where it is a servant's duty to account for and pay over the money received by him at stated times, his not doing so wilfully amounts to embezzlement.¹¹

CASES.—Guilty.—Public servant.—A clerk in a record room made over a document forming part of a record in his custody to a person who was entitled to the document, but who would otherwise have had to present an application on stamped paper in order to secure its return in a legal manner. It was held that the clerk was under the above circumstances rightly convicted under this section.¹² A postmaster who had to pay to the holders of certain cash certificates the money due thereon at a certain rate, paid the holders at a lower rate and appropriated the difference himself. It was held that he was guilty of an offence under this section.¹³ A Sanitary Inspector who misappropriated night soil was held guilty under this section.¹⁴

Not guilty.—Public servant.—A certain consignment of rice lay unclaimed at the docks and was advertised for sale by auction by the Port Commissioners. But the rice was found to be in a rotten condition and was ordered to be destroyed by

¹ *Em Soonder Poddar*, (1878) 2 C. L. R. 515.

² Wharton, 14th Edn., p. 109.

³ *Hira Lal*, (1907) P. R. No. 19 of 1908.

⁴ Wharton, 14th Edn., p. 649.

⁵ *Ibid.*, p. 400.

⁶ *Ibid.*, p. 148.

⁷ *Stevens v. Biller*, (1883) 25 Ch. D. 31.

⁸ Wharton, 14th Edn., p. 95.

⁹ The Indian Contract Act (IX of 1872), s. 182.

¹⁰ *Mulhusami Pillai*, (1895) 1 Weir 432.

¹¹ *Chandra Prasad*, (1926) 5 Pat. 578.

¹² *Ganga Prasad*, (1904) 27 All. 260.

¹³ *Sita Ram*, (1919) 42 All. 204.

¹⁴ *Hori Lal*, (1922) 45 All. 282.

the Health Department of the Corporation of Calcutta. It was entrusted for the purpose of destruction to the accused, who were Inspectors in that Department; but they sold the same to a third party and retained the proceeds of such sale. It was held that they were not guilty of any offence under the Code, though they might have been guilty of infringing a departmental rule.¹

Director.—Where the directors of a bank paid dividends out of deposits, when there were no profits, thereby causing gain to persons to which they were not entitled, and wrongful loss to depositors, they were held guilty under this section.² The mere passing of an incorrect balance-sheet does not amount to an offence under this section.³

Of the Receiving of Stolen Property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as “stolen property,” whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India.¹ But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof,² it then ceases to be stolen property.

411. Whoever dishonestly receives or retains³ any stolen property,⁴ knowing or having reason to believe the same to be stolen property,⁵ shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—Section 410 explains what comes under the words ‘stolen property.’ Things which have been stolen, extorted, or robbed, or which have been obtained by criminal misappropriation or criminal breach of trust come under the extended signification given to these words. The essence of the offence of receiving stolen property under s. 411 consists in the receipt or retention, with a full knowledge at the time of receipt, that the property was obtained in one of the ways specified in s. 410. It is immaterial whether the receiver knows or not who stole it. The section does not apply to the actual thief. The class of persons against whom it is directed is a class to whom these alternative words apply—“knowing or having reason to believe the same to be stolen property.”⁶ Unless the right of ownership in the property was lost to the owner by the commission of any of the offences enumerated in s. 410, the property could not be said to be stolen property.⁷

The receipt or retention must take place within British India, unless the person receiving or retaining out of British India is a British subject. A subject of an Indian State, who is guilty of receiving stolen property within that State, is not liable to be punished under the Code.⁸

¹ *Wilkinson*, (1898) 2 C. W. N. 216.

² *Moss*, (1893) 16 All. 88; *Daulat Rai*, (1915) P. R. No. 28 of 1915.

³ *Giles Seddon v. Loane*, (1910) 11 Cr. L. J. 624.

⁴ *Johri*, (1901) 23 All. 266.

⁵ *Phul Chand Dube*, (1929) 52 All.

200.

⁶ *Gunna*, (1926) 48 All. 687.

1. 'Whether the transfer has been made,....within or without British India.'—Where there is a dishonest retention in British India of property stolen elsewhere it is no defence by the accused, being a foreign subject, that the property was stolen by himself, he not being liable to be tried, convicted, or punished by the British Court for the theft.¹ Where a Nepalese subject, having stolen cattle in Nepal, brought them into British territory, it was held that he could not be convicted of theft, but that he might be convicted of an offence under this section.² Similarly, where the accused, a subject of an Indian State, committed a theft at Rajkot (Indian State) and brought the property to Thana (British territory), it was held that he could not be tried for theft, but that he might be tried under this section for retaining stolen property.³

2. 'But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof.'—If the owner of the stolen property somehow resumes possession of the stolen property before its receipt by the person accused of receiving it, it ceases to be stolen property, and the accused cannot be convicted of receiving it knowing it to have been stolen.⁴ If stolen goods are restored to the possession of the owner, and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods, and the third person cannot be convicted of receiving stolen goods, although he received them believing them to be stolen. Where, therefore, the goods were found by the owner in the pockets of the thief, and the owner sent for a policeman who took the goods, but subsequently returned them to the thief, who was sent by the owner to sell them where he had sold others, and the thief then went to the shop of the accused and sold the goods, and gave the money to the owner, it was held that the accused was not guilty of receiving stolen goods, inasmuch as they were delivered to him under the authority of the owner by a person to whom the owner had bailed them for that purpose.⁵

If a person buys in good faith property which has been stolen he does not acquire any ownership therein.⁶

3. 'Dishonestly receives or retains.'—The offences of receiving and retaining are different. Dishonest 'retention' is contradistinguished from dishonest 'reception.' In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with the act of such acquisition. Every person who retains possession of property dishonestly, possesses and continues to possess it dishonestly so long as he retains it dishonestly, but every person who possesses and continues to possess dishonestly, does not 'retain' dishonestly within the meaning of s. 411. Neither the thief nor the receiver of stolen property commits the offence of retaining such property dishonestly merely by continuing to keep possession of it. To constitute dishonest retention, there must have been a change in the mental element of possession,—possession always subsisting *animo et facto*—from an honest to a dishonest condition of the mind in relation to the thing possessed. A simple illustration is the case of a pawnbroker who receives property in pledge honestly, and subsequently discovering it to be stolen property, notwithstanding mentally resolves to keep it for his own benefit. In the absence of any act amounting to misappropriation or conversion

¹ *Jafar Ali*, (1893) P. R. No. 30 of 1894.

² *Sunkar Gope*, (1880) 6 Cal. 307.

³ *Abdul Latib valad Abdul Rahi-man*, (1885) 10 Bom. 186.

⁴ *Villinsky*, [1892] 2 Q. B. 597.

⁵ *Dolan*, (1855) 6 Cox 440.

⁶ Illustration (a) to s. 108, Indian Contract Act, 1872.

of the property to his own use, the pawn-broker could not be convicted under s. 408 of criminal misappropriation, but he might be held to have committed this offence. Thus a person cannot be convicted of 'receiving' if he had no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was stolen.¹ The offence of dishonest retention of stolen property may be complete without any guilty knowledge at the time of receipt.²

Manual possession not necessary for receiving.—It is not necessary that the accused should have had manual possession of the goods. Where the consignee presented a railway receipt for certain stolen goods to the Station-master, paid the freight and received formal delivery of the package from the latter, it was held that the goods had come to be not merely in the potential possession of the consignee but actually within his power and unrestricted control, though he had not removed them from the station where they were then lying, nor made any attempt to do so, and that he had received them within the meaning of s. 411.³

4. 'Stolen property'.—Property into or for which the stolen property has been converted or exchanged is not stolen property.⁴ Hence money obtained upon forged money-orders,⁵ or an ingot obtained by making stolen jewellery,⁶ is not stolen property.

5. 'Knowing or having reason to believe the same to be stolen property'.—The offence made punishable is not the receiving stolen property from any particular person, but the receiving such property knowing it to be stolen. The word 'believe' is a much stronger word than suspect, and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired.⁷ But a person is not guilty of this offence although at the time of receiving the property he erroneously believes it to be stolen⁸ or where the articles are not of an unusual character but are such as easily pass from hand to hand.⁹ Where the accused was found in British India in possession of a horse stolen shortly before from a village in an Indian State knowing that it had been stolen, it was held that he was guilty under this section.¹⁰

Property stolen from different owners.—Where there is no evidence that articles stolen from several persons were received on different dates, the dishonest receipt of the same is a single offence under this section, and a person tried on a charge thereunder, in respect of the retention of some of the articles on a certain date, cannot be tried, on a similar charge, in respect of other articles of which he was in possession on such date.¹¹ Where the property stolen formed the contents of a single parcel, a single offence in respect of all the articles contained in the parcel,

¹ Per Plowden, J., in *Najibulla Khan*, (1884) P. R. No. 18 of 1884.

² (1869) 4 M. H. C. (Appx.) xlii.
³ *Shewdhar Sukul*, (1913) 40 Cal. 990.

⁴ *Subha Chand*, (1861) P. R. No. 39 of 1881.

⁵ *Monmohun Roy*, (1875) 24 W. R. (Cr.) 83.

⁶ *Subha Chand*, supra.

⁷ *Rango Timaji*, (1880) 6 Bom. 402.
⁸ *Gaya Prasad*, (1931) 6 Luck. 658.

⁹ *Issup*, (1888) Unrep. Cr. C. 389.

¹⁰ *Ravaji*, (1892) Unrep. Cr. C. 594.

¹¹ *Mul Chand*, [1943] Lah. 62.

¹² *Ganesh Sahu*, (1923) 50 Cal. 594;
Ishan Muchi, (1888) 15 Cal. 511; *Shew Charan*, (1923) 45 All. 485.

and not separate offences in respect of the different articles, should be treated as the basis of the conviction.¹

CASES.—*Res nullius* cannot be subject of receiving.—Where a bull was let loose as a part of a religious ceremony, and was the property of no one, it was held that it could not be the subject of an offence under this section,² as the original owner had surrendered all his rights as its proprietor and that it was *nullius in terra*.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly receiving property stolen in the commission of a dacoity.

COMMENT.—This section was enacted to stamp out the offence of dacoity which was very rampant when the Code came into force. It refers to persons other than actual dacoits. It provides the same punishment to a receiver of property obtained in dacoity as to dacoits themselves.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

COMMENT.—This section punishes severely the common receiver or professional dealer in stolen property. One who casually receives stolen property is punished under the two preceding sections according to the taint attaching to the property. A person cannot be said to be a habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. It must be shewn that the property was received on different occasions and on different dates.³

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assisting in concealment of stolen property.

COMMENT.—This section requires two things—

1. Voluntary assistance in concealing or disposing of or making away with property.

¹ *Ram Pershad*, (1924) 2 Ran. 80.

² *Baburam Kansari*, (1891) 19 Cal.

³ *Bandhu*, (1885) 8 All. 51; *Nihal*, 190. (1887) 9 All. 348.

2. Knowledge or reason to believe that such property is stolen property.

The Bombay High Court has held, differing from earlier cases, that persons dishonestly receiving property could be charged with and convicted of concealing or disposing of it under this section.¹

CASE.—The accused was the driver of a taxi, which was carrying several persons who had hired it. While on its way the taxi stopped at a place for some reason, not known, and two of the passengers got down from the taxi and within a distance of about three and a half yards from the taxi they suddenly and without premeditation attacked, injured and robbed a man of his purse containing about Rs. 50. The robbers then boarded the taxi and the driver, in spite of the cries of the victim, drove away as fast as he could. It was held that the driver assisted the robbers in making away with the money so robbed and was guilty under this section.²

Of Cheating.

415. Whoever, by deceiving any person,¹ fraudulently or dishonestly induces the person so deceived to deliver any property to any person,² or to consent that any person shall retain any property,³ or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived,⁴ and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property,⁵ is said to “cheat.”

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

ILLUSTRATIONS.

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

¹ *Abdul Gani*, (1925) 27 Bom. L. followed.
 R. 1373, 49 Bom. 872, *Jethalal*, (1905) ² *Harri Singh*, [1940] 2 Cal. 9.
 29 Bom. 448, 7 Bom. L. R. 527, not

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

COMMENT.—In most of the foregoing offences relating to property the offender merely got possession of the thing in question, but in the case of cheating he obtains possession plus property in it.

The authors of the Code observe: "We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained; that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property if its object is only to cause a distribution of property which the law recognizes as rightful.

"We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

"In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating."

English law.—Whoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of misdemeanour. The definition of cheating as given in s. 415 is much wider and includes a promise as to future conduct not intended to be kept and also damage or harm to a person in body, mind, reputation or property.

Ingredients.—The section requires—

- (1) Deception of any person.
- (2) (a) Fraudulently or dishonestly inducing that person
 - (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes

¹ Note N, pp. 164, 166.

or is likely to cause damage or harm to that person in body, mind, reputation or property.

In the definition of cheating there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts the inducing must be intentional.

The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs; for these cases generally provision is made in s. 417 of the Code. For cases in which property is transferred a more specific provision is made by s. 420.

The offence of cheating is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act.¹

Cheating and extortion.—The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is, that the extortioner obtains the consent by intimidation, and the cheat by deception.²

Cheating, criminal breach of trust, and criminal misappropriation.—Cheating differs from the last two offences in the fact that the cheat takes possession of property by deception. There is wrongful gain or loss in both cases and in both cases there is inducement to deliver property.

1. 'Deceiving any person.'—Deceiving means causing to believe what is false, or misleading as to a matter of fact, or leading into error. Whenever a person fraudulently represents as an existing fact that which is not an existing fact, he commits this offence. A wilful misrepresentation of a definite fact with intent to defraud, cognizable by the senses—as where a seller represents the quantity of coals to be fourteen cwt. whereas it is in fact only eight cwt., but so packed as to look more; or where the seller, by manœuvring, contrives to pass off tasters of cheese as if extracted from the cheese offered for sale, whereas it is not—is a cheating.³

The person deceived need not be a definite person to whom the false representation is made.

It is not necessary that the false pretence should be made in express words; it can be inferred from all the circumstances attending the obtaining of the property,⁴ or from conduct.⁵ If a person orders out goods on credit promising to pay for them on a particular day knowing that it was impossible for him to pay, this would amount to cheating. But the mere fact that he is in embarrassed circumstances does not lead to such inference.⁶

Where a person knows that the statements made by another are false, but still acts upon them with a view to entrap that person, the accused will be guilty not of the principal offence of attempt to commit it. If a person buys milk knowing it to be watered in order to prosecute the seller, the conviction cannot be of cheating but of attempt to cheat.⁷ M wrote a letter to the Currency Office at Calcutta,

¹ *Sundar Singh*, (1904) P. R. No. 25 32 Cal. 941.
of 1904.

² Note N, p. 163.

³ *Goss*, (1860) 8 Cox 262.

⁴ *Maria Giles*, (1865) 10 Cox 44;
Khoda Bux v. Bakeya Mundari, (1905)

⁵ *Mohsinbhai*, (1881) 34 Bom. L.
R. 313, 56 Bom. 204.

⁶ *Ibid.*

⁷ *Kalec Miodock*, (1872) 18 W. R.
(Cr.) 61.

enclosing the halves of two Government currency notes, stating that the other halves were lost, and inquiring what steps should be taken for the recovery of the value of the notes. The Currency Office having upon inquiry discovered that the amount of the notes had been paid to the holder of the other halves and that the notes had been withdrawn from circulation and cancelled, sent M the usual form claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M and returned by him to the Currency Office. It was held that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of attempt to cheat.¹

2. 'Fraudulently or dishonestly induces the person so deceived to deliver any property.'—The words 'fraudulently' and 'dishonestly' do not govern the whole of the definition of cheating. The section is divided into two parts, the second of which provides for the case of a person who, by deceiving another intentionally, induces the person so deceived to do an act which causes or is likely to cause damage or harm although the deceiver has not acted fraudulently or dishonestly.² To describe consequences of an act to be more serious than, in fact, they were likely to be, may be deceiving, but is not cheating if done without any fraudulent or dishonest intention. Thus, to induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating.³

3. 'Or to consent that any person shall retain any property.'—It is cheating whether a deception causes a person fraudulently or dishonestly to acquire property by delivery, or to retain property already in his possession.

4. 'Intentionally inducing that person to do or omit to do anything which he would not do or omit, etc.'—Intention is the gist of the offence. The person cheated must have been intentionally induced to do an act which he must not have done or to omit to do an act which he would have done, owing to the deception practised on him. The intention at the time of the offence and the consequence of the act or omission itself have to be considered.⁴ Intent refers to the dominant motive of action, and not to a casual or merely possible result.⁵

5. 'Which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.'—The damage must be the direct, natural or probable consequence of the induced act. The resulting damage or likelihood of damage may not be within the actual contemplation of the accused when the deceit was practised. The person deceived must have acted under the influence of deceit, and the damage must not be too remote.⁶

Railway waggons are 'property' within the meaning of this term. They are the property of the railway company. They are not as property delivered to a colliery merely by being taken to the colliery siding, although the colliery are entitled to load the waggons. The unauthorized allotment of more waggons to a colliery than they were entitled to, through the fraudulent or dishonest acts of the servants of a railway company, would not cause or would not be likely to cause

¹ *The Government of Bengal v. Umesh Chunder Mitter*, (1888) 16 Cal. 310.

² *Mohabat*, (1889) P. R. No. 20 of 1889.

³ *Raj Coomar Banerjee*, (1864) W. R. (Cr.) (Gap No.) 25.

⁴ *Harendra Nath Das v. Jyotish Chandra Datta*, (1924) 52 Cal. 188.

⁵ *Ibid.*

⁶ *Legal Remembrancer v. Manmatha Bhusan Chatterjee*, (1923) 51 Cal. 250; *Harendra Nath Das v. Jyotish Chandra Datta*, *supra*.

any appreciable damage to the railway company's reputation, as the damage would be too remote.¹

Explanation.—The Explanation refers to the actual deception itself and not to the concealment of a deception by some one else.

The giving of a cheque on a bank as payment for goods or in payment of a debt amounts to a representation that the drawer has authority to draw on the bank for that amount and that the cheque is a good and valid order for the payment of its amount and that the cheque will be paid.² The accused presented a cheque, in part payment of goods purchased, to A, a shop salesman, who sent for R, and there was a conversation between them in a language which the accused did not understand, and R thereupon cashed the cheque, and the amount, less the discount and the price of the goods, was paid to the accused. It was held that the offence of cheating R was established, as the tender of the cheque as a genuine one carried with it the representation to R, through A, that it would be honoured on presentation, and that the omission to disclose to A, the fact that he had no money in the bank to meet the cheque, and that it would be dishonoured on presentation, was a dishonest concealment under this Explanation.³

Puffing.—The authors of the Code⁴ observe: "If all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word; the buyer rises to nine, and says that he will go no higher; the seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind; the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions."⁵

A simple misrepresentation of the quality of goods is not a false pretence.⁶ In order to obtain an advance of money on a large quantity of plated spoons the defendants represented to a pawnbroker that they were of the best quality, that they were equal to Elkington's A, that the foundation was of the best material, and that they had as much silver upon them as Elkington's A. The jury found that these representations were wilfully false, and that by means of them an advance of money was made. It was held that the representation being a mere exaggeration or puffing of the quality of the goods in the course of a bargain, it was not a false pretence.⁷ The accused induced the prosecutor to buy certain plated goods at an auction for £7 on the representation that they were the best silver plate, lined with gold, and worth £20. The foundation of the goods was Britannia metal, instead of nickel as the best goods, covered with a transparent film of silver, and they were worth only about 30s. It was held that there was no false pretence.⁸ But when the thing sold is of an entirely different description from what it is represented to be, and the statements made are not in the form of an expression of

¹ *Legal Remembrancer v. Manmatha Bhusan Chatterjee*, (1923) 51 Cal. 250; *Harindra Nath Das v. Jyotish Chandra Datta*, (1924) 52 Cal. 188.

² *Kesharji Madharyi*, (1930) 32 Bom. L. R. 562.

³ *Martindale*, (1924) 52 Cal. 347.

⁴ Note N, p. 163.

⁵ *Bryan*, (1857) 7 Cox 312.

⁶ *Ibid.*

⁷ *Levine and Wood*, (1867) 10 Cox 374.

opinion or mere praise, the offence of cheating is committed. Where the accused induced the prosecutor to purchase a chain from him by fraudulently representing that it was 15-carat gold, when it was only of a quality a trifle better than 6-carat, knowing at the time that he was falsely representing the quality of the chain as 15-carat gold, it was held that the statement that the chain was 15-carat gold, not being mere exaggerated praise, nor relating to a mere matter of opinion, but a statement as to a specific fact within the knowledge of the accused, was a false pretence.¹

CASES.—Inducing person deceived to deliver property.—Where a person hired certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding he being well aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment in a civil suit in respect of an alleged claim;² and where the accused received a Government promissory note promising to return certain jewels pledged to them but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender,³ this offence was held to have been committed.

Misrepresentation as to caste.—To palm off a woman as belonging to a caste different to the one to which she really belongs with the object of obtaining money amounts to cheating.⁴

Inducing person deceived to do something—Where a prostitute communicated syphilis to a man who had sexual intercourse with her on the strength of her representation that she was free from disease, it was held that this offence was committed.⁵

Vendor and purchaser.—The selling of milk and water in about equal proportion as pure milk was held to support a finding of cheating.⁶ Where the vendor of immovable property omitted to mention that there was an incumbrance on the property, it was held that he could not be convicted of cheating unless it was shown either that he was asked by the vendee whether the property was incumbered and said it was not, or that he sold the property on the representation that it was unincumbered.⁷

Where property is delivered, fraudulent or dishonest intention on the part of the accused is necessary: where any act is done through deception, that act should have caused damage or harm.—Where the accused secretly entered an exhibition building without having purchased a ticket and was there apprehended, it was held that such act did not amount to cheating.⁸ If the accused had said to the door-keeper that he had a ticket, and had thus obtained access to the building, it would have been cheating. Where a person who purchased rice from a famine relief officer at a certain rate on condition that he should sell it at a pound less, was convicted of cheating because he did not sell it at the rate agreed on, it was held that as there had been no wrongful gain or loss to any one, no offence was committed.⁹ Where a person put the name of a painter upon the copy of one of his pictures, in order that it might pass off as the original picture, it was

¹ *Ardley*, (1871) L. R. 1 C. C. R. 1918.
301.

² *Kadir Bux*, (1871) 3 N. W. P.
16.

³ *Sheodurshun Dass*, (1871) 3 N.
W. P. 17.

⁴ *Komul Dass*, (1865) 2 W. R. (Cr.).
7; *Jhanda Singh*, (1917) P. R. No. 6 of

⁵ *Rakma*, (1886) 11 Bom. 59.

⁶ *Nana*, (1880) Unrep. Cr. C. 145.

⁷ *Bishan Das*, (1905) 27 All. 561.

⁸ *Mehervanji Bejanji*, (1869) 6 B.
H. C. (Cr. C.) 6.

⁹ *Lal Mahomed*, (1874) 22 W. R.
(Cr.) 82.

held that he had committed this offence.¹ Under the Code it would amount to forgery as well.

False entries.—Where the accused was requested to make an entry in a book of accounts belonging to the complainant, to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts, instead of making this entry entered in a language not known to the complainant that this sum had been paid to the complainant, it was held that he had committed an offence of attempt to cheat.²

Passengers by railway.—Where a passenger travelled in a carriage of higher class than that for which he had paid fare,³ and where a passenger gave some part of this luggage to a co-passenger to evade the charge for overweight,⁴ it was held that this offence was not committed. Where a man endeavoured to evade payment of a railway fare by the production of an old pass altered as to date and number of persons, it was held that he was guilty of attempt to cheat.⁵

Attempt to create false evidence.—The accused, in order to create false evidence that he had paid a sum of Rs. 650 which he owed to the complainant, filled a registered envelope with blank sheets of paper and posted it to the complainant after insuring it for Rs. 650. The complainant gave an acknowledgment of receipt of the parcel to the Post Office on receiving the same. It was held that the accused was guilty of attempt to cheat.⁶ The Calcutta High Court has, however, held that a person who sends an insured cover, purporting to contain Government currency-notes, but which, on receipt by the addressee, is found to contain only a letter advising the despatch of notes and pieces of waste paper, is not guilty of cheating. The Court observed :—"All that the person deceived has been induced to do is that he has signed a receipt acknowledging the delivery of a cover. He has not acknowledged by that the receipt of any sum of money alleged to be contained in the cover. That being so, we are unable to say that the charge of cheating has been brought home to the accused in the circumstances which appear on the record before us."⁷ Similarly, the Allahabad High Court in a case held that a person who sent, in an insured cover, Khilafat bonds instead of Government currency-notes, in discharge of his liability, was not guilty of attempt to cheat.⁸

Abetment.—The accused by falsely representing a notorious gambler well skilled in all tricks of gambling, to be a rich merchant, induced the complainant to gamble with him on the representation that the merchant would fall an easy prey if the complainant gambled with him. The complainant was thus induced to part with all his property in gambling. It was held that the accused was guilty of abetting the offence of cheating.⁹ Accused No. 1 procured quantities of saccharine and bicarbonate of soda. He adulterated saccharine with bicarbonate of soda and put the mixture into tins which he gave to a broker (accused No. 2) to sell. Accused No. 2 sold the mixture as genuine saccharine and received money for it, which he made over to accused No. 1. Accused No. 2 received his brokerage for the transaction. Accused No. 1 having been charged with abetment of cheating

¹ *Closs*, (1857) 7 Cox 494.

² *Kunju Nayar*, (1888) 12 Mad. 114.

³ *Dayabhai Parjaram*, (1864) 1 B. H. C. 140.

⁴ *Paras Ram*, (1903) P. R. No. 25 of 1903.

⁵ *Gunpat*, (1808) P. R. No. 6 of 1868.

⁶ *Sadho Lal*, (1916) 1 P. L. J. 391.

⁷ *Raman Behari Roy*, (1923) 50 Cal. 849.

⁸ *Tula Ram*, (1923) 21 A. L. J. R. 865.

⁹ *Jahana*, (1904) P. R. No. 4 of 1905.

it was held that under the circumstances accused No. 1 was guilty of the offence charged.¹

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

ILLUSTRATIONS.

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

COMMENT.—To 'personate' means to pretend to be a particular person.² As soon as a man by word, act, or sign holds himself forth as a person entitled to vote with the object of passing himself off as that person, and exercising the right which that person has, he has personated him.³ If a person at Oxford, who is not a member of the university, go to a shop for the purpose of fraud, wearing a commoner's cap and gown, and obtain goods, this appearing in a cap and gown is a sufficient false pretence although nothing passed in words.⁴

The person personated may be a real or an imaginary person.

Ingredients.—This section requires any one of the following essentials :

(1) Pretension by a person to be some other person.

(2) Knowingly substituting one person for another.

(3) Representation that he or any other person is a person other than he or such other person really is.

CASES.—False representation at examination.—Where A falsely represented himself to be B at a University Examination, got a hall-ticket under B's name, and wrote papers in B's name, it was held that A was guilty of cheating by personation and forgery.⁵

False representation as to caste.—Where the accused represented to the prosecutor that a girl was a Brahmin and thereby induced him to part with his money on consideration of the marriage of the girl to his brother when the girl really was of a low caste, it was held that he was guilty of cheating by false personation.⁶ The accused falsely represented to the mother of a girl that he was a *Barendra* Brahmin, whereas in fact he really belonged to another sub-caste, namely, *Barna* Brahmin, and thereby procured his marriage with the girl to which the mother would not have agreed but for such false representation and as a result of which marriage the mother was excommunicated. It was held that the accused was guilty of cheating by false personation.⁷ The former Chief Court of the Punjab

¹ *Bholasing*, (1924) 26 Bom. L. R. 211. *Ashwini Kumar Gupta*, [1937] 1 Cal. 71.

² *Hague*, (1864) 4 B. & S. 715.

³ *Ibid*, p. 721.

⁴ *Barnard*, (1881) 7 C. & P. 784.

⁵ *Appasami*, (1889) 12 Mad. 151;

⁶ *Mohim Chunder Sil*, (1871) 16 W. R. (Cr.) 42; *Bhaiji*, (1886) Unrep. Cr. C. 301.

⁷ *Kshiteesh Chandra Chakrabarti*, [1937] 2 Cal. 221.

held that a person could not be convicted of an offence under this section for disposing of a girl representing her to be of a different caste from that to which she belonged.¹ It also held that to describe a Brahmin woman as a *kirari* or a sweeper woman as a *jal* widow was an offence under s. 420 and not one under this section.² Where a person represented a girl to be the daughter of a certain woman of good family, when he knew her to be the daughter of another woman, it was held that he was guilty of this offence.³

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

COMMENT.—This section punishes simple cases of cheating. Where there is delivery of any property or destruction of any valuable security, s. 420 is the proper section to apply.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

COMMENT.—This section applies to cases of cheating by guardians, trustees, solicitors, agents, the manager of a Hindu family, directors or managers of a bank in fraud of the shareholders. It is the abuse of trust that is met with severe punishment.

False balance-sheet for inducing to renew deposit.—Where the directors, manager and accountant dishonestly, that is, to obtain wrongful gain for themselves or to cause wrongful loss to others, put before the shareholders balance-sheets which they knew to be materially false and misleading and likely to mislead the public as to the condition of the bank and concealed its true condition and thereby induced depositors to allow their money to remain in deposit in the bank, they were held liable under this section⁴

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable

Cheating and dishonestly inducing delivery of property.

¹ *Singhara*, (1903) P. R. No. 17 of 1903.

² *Durga Das*, (1933) 35 Bom. L. R. 1181.

³ *Dhunput Ojhab*, (1867) 7 W. R. (Cr.) 51.

⁴ *Moss*, (1893) 16 All. 88.

security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—Simple cheating is punishable under s. 417. But where there is delivery or destruction of any property or alteration or destruction of any valuable security resulting from the act of the person deceiving, this section comes into operation.

CASES.—Where a person whose duty it was to ascertain and report the current rates in the market, by arrangement with persons in the market, reported rates higher than those really current, and in consequence of which higher rates were paid to sellers than they were entitled to, it was held that he was guilty of this offence.¹ Where the accused induced the complainant to deliver to him a bicycle under false representations that he was a commission agent and that the machine was required for an up-country purchaser, but after taking its delivery he negotiated its sale to a customer in Bombay, it was held that the offence of cheating and dishonestly inducing the delivery of property was complete as soon as the bicycle was handed over.²

The accused, by making a false representation that he was an employee of the Calcutta Municipal Corporation, obtained rupees ten as subscription from the Health Officer of that Corporation, towards the funds of a charitable society. The money was duly made over by the accused to the charity, but he was subsequently charged with the offence of “cheating,” and was convicted under this section. It was held that he was not guilty as there was no such deception as to cause “wrongful loss” or “wrongful gain.”³

Attempt.—The accused manufactured certain spurious tripkets⁴ and took them to a goldsmith, showed them to him, and said they were of gold (which they were not) and that they were stolen property (which was also untrue). He further said he did not wish to sell them in the market and asked the goldsmith to buy them. The goldsmith did not buy them and the negotiations went no further. It was held that the accused was guilty of attempt to cheat.⁴

Of Fraudulent Deeds and Dispositions of Property.

421. Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property,¹ intending thereby to prevent, or knowing it to be likely that he will

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

¹ *Parmeshar Dat*, (1886) 8 All. 50.
201.

² *Banaji*, (1900) 2 Bom. L. R. 621.

³ *Ashutosh Mallick*, (1905) 33 Cal.

⁴ *Abdullah*, (1914) P. R. No. 14 of 1914.

COMMENT.—This and the three following sections deal with fraudulent conveyances referred to in s. 53 of the Transfer of Property Act and the Presidency-towns and Provincial Insolvency Acts.

This section specially refers to frauds connected with insolvency. The offence under it consists in a dishonest disposition of property with intent to cause wrongful loss to the creditors. It will cover benami transactions in fraud of creditors. It will apply to property both movable and immovable.

Compare ss. 206-210 with ss. 421-424 as they are similar in character. The former sections deal with fraud on Courts, the latter, with fraud on creditors.

1. 'Property.'—This word includes a chose in action. The right to cut trees under an agreement for the purpose of making charcoal from wood is movable property.¹

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing debt being available for creditors.

COMMENT.—This section, like the preceding section, is intended to prevent the defrauding of creditors by masking property. Any proceedings to prevent the attachment and sale of debts due to the accused will fall under this section. The offence consists in the dishonest or fraudulent evasion of one's own liability.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

COMMENT.—This section deals with fraudulent and fictitious conveyances and trusts. Under it, the dishonest execution of a benami deed is punishable. Where the consideration for the sale of immovable property was, with the consent of the purchaser, exaggerated in a deed of sale in order to defeat the claim of the pre-emptor, it was held that the purchaser was guilty of this offence.²

The word 'consideration' does not mean the property transferred. An untrue assertion in a transfer deed that the whole of a plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under this section.³

¹ *Manchersha v. Ismail*, (1935) 60 All. 31.
Bom. 706, 38 Bom. L. R. 168.

² *Gurditta Mal*, (1901) P. R. No. 10 of 1902; *Mahabir Singh*, (1902) 25

³ *Mania Goundan*, (1911) 37 Mad. 47.

CASE.—Where an accused person had unsuccessfully sought to obtain a woman in marriage and thereafter made and registered a writing in her favour falsely reciting that he had married her, and purporting to convey to her a plot of land in lieu of her dower, it was held that he was guilty under this section as he intended to cause injury to her and her husband and to support his own false claim to that status. He was also held guilty under s. 198.¹

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

COMMENT.—This section provides for cases not coming within the purview of ss. 421 and 422. It contemplates such a concealment or removal of property from the place in which it is deposited, as can be considered fraudulent. Where one of the several partners removed the partnership books at night, and when questioned denied having done so;² where a judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force;³ where the accused who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due shares,⁴ it was held that this offence was committed. But a removal of crops to avoid an illegal restraint,⁵ of removal of property, which was attached after the date fixed for the return of the warrant of attachment, from the possession of the custodian⁶ was held not to amount to an offence under this section. Certain crops were attached in execution of a decree and placed in the custody of a bailiff. The crops did not belong to the judgment-debtors, and the owners cut and removed a portion of them in spite of the resistance of the bailiff. It was held that no offence was committed.⁷

Of Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person,¹ causes the destruction of any property, or any such change in any property or in the situation thereof² as destroys or diminishes its value or utility, or affects it injuriously,³ commits "mischief."

Mischief.

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the

¹ *Legal Remembrancer v. Ahi Lal Mandal*, (1921) 48 Cal. 911.

² *Gour Benode Dutt*, (1873) 21 W. R. (Cr.) 10.

³ *Obayya*, (1898) 22 Mad. 151.

⁴ *Sivanupundia Thevan*, (1914) 38 Mad. 793.

⁵ *Gopalasamy*, (1902) 25 Mad. 729.

⁶ *Gurdial*, (1932) 55 All. 119.

⁷ *Ghasi*, (1929) 52 All. 214.

property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

ILLUSTRATIONS.

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water into an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e) A having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f) A causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(g) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h) A causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for mischief.

COMMENT. —*Ingredients.*—This section requires three things:—

- (1) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person;
- (2) causing the destruction of some property or any change in it or in its situation; and
- (3) such change must destroy or diminish its value or utility, or affect it injuriously.

This section deals with a physical injury from a physical cause.¹

1. 'Intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person.'—This section does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.² The damage need not necessarily consist in the infringement of

¹ *Moti Lal*, (1901) 24 All. 155, 156. *Chunder*, (1885) 12 Cal. 55.

² *Juggeshwar Dass v. Koylash*

an existing, present and complete right, but it may be caused by an act done with the intention of defeating and rendering infructuous a right about to come into existence [vide ill. (d)]. Where some persons belonging to one village pulled up and removed fishing stakes lawfully fixed in the sea within three miles of a shore by the villagers of another village, and the removal of the stakes, though without any intention to appropriate them, occasioned "damage", it was held that the offence amounted to mischief.¹ A dominant owner, having a right of way over land belonging to another, has no right himself to remove an obstruction unless his right of way is impaired by it. If he does so, he has employed unlawful means and if loss of property is caused thereby to another, he is guilty under this section.²

2. 'Causes the destruction of any property or any such change in any property, etc.'—It is the essence of this offence that the perpetrator must cause the destruction of property or such change in it as destroys or diminishes its value or utility. The destruction of a document evidencing an agreement void for immorality constitutes this offence as it can be used as evidence for other collateral purposes.³ The accused on receiving delivery of a registered article from a Post-master was requested to sign an acknowledgment for the article received by him, but instead of returning the same duly signed he tore it up and threw it on the ground. It was held that he was guilty of mischief.⁴

The 'destruction' or 'change' should be contrary to the natural use and serviceableness of the property in question. If a person unauthorisedly allows goats to graze in a forest, the grazing rights in which are restricted to holders of permits, the offence of mischief is not committed as by such an act the grass is only put to its normal use.⁵ The accused had a dispute about the possession of a certain land with the complainant. The complainant dug a well with a view to cultivate the said land, but the accused forcibly entered on the land and damaged the well. It was held that the accused were guilty of mischief even though the complainant was a trespasser.⁶

'Property' means some tangible property capable of being forcibly destroyed but does not include easement. The section refers to corporeal property and provides for cases in which such property is either destroyed or altered or otherwise damaged with a particular intent. A right to collect toll at a public ferry is not property within the meaning of this section.⁷

'Change' means a physical change in composition or form. The section contemplates a physical injury from a physical cause. Making a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or affects it injuriously.⁸ Certain Hindus present at a caste dinner had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, inasmuch as their action had polluted the food, and had, from a Hindu

¹ *Kastya Rama*, (1871) 8 B. H. of 1905. C. (Cr. C.) 68.

² *Hari Bilash Shau v. Narayan Das Agarwala*, [1938] 1 Cal. 680; *Zipru*, (1927) 51 Bom. 487, 29 Bom. L. R. 484.

³ *Vyapuri*, (1882) 5 Mad. 401.

⁴ *Sukha Singh*, (1905) P. R. No. 24

⁵ *Ragupathi Ayyar v. Narayana Goundan*, (1928) 52 Mad. 151.

⁶ *Abdul Hussein*, [1943] Kar. 7.

⁷ *Ali Ahmad v. Ibadat-Ullah Khan*, [1944] All. 189.

⁸ *Bansi*, (1912) 34 All. 210.

religious point of view, rendered it unfit to be eaten. The High Court held that the conviction was wrong.¹ The conclusion arrived at by the High Court is not satisfactory.

3. 'As destroys or diminishes its value or utility, etc.'—Destruction or diminution in value of the property regarding which the offence is committed is essential.

Explanation 1.—Illustrations (e) and (f) exemplify this Explanation. It is not essential that the property interfered with should belong to the person injuriously affected. D, as a lessee of Government, held rights of fishery in a particular stretch of a river. C, by diverting the water of that river, converted the bed of the river for a considerable distance into dry land, or land with a very shallow covering of water upon it, and by so doing he was enabled to destroy, and did destroy, very large quantities of fish, both mature and immature. It was held that when C deliberately changed the course and condition of the river in the manner described to the detriment of D, he was guilty of mischief.²

Explanation 2.—A person who destroys property which, at the time, belongs to himself, with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to anybody else is guilty of this offence.³ Illustrations (d) and (g) shew that a man may commit mischief on his own property. In order, however, to his doing so, it is necessary that he intends to cause wrongful loss to some person, as in the cases stated in the illustrations.

CASES.—No mischief if no wrongful loss or damage to public or to any person.—Where the accused was found catching fish in a public river, the right of fishing in which was let out by Government to another, but no fencing was put up to shut up the fish in any manner;⁴ where the servant of a person pulled down a building which a Civil Court had declared ought not to have been erected;⁵ where a person dug out tombs of the forefathers of the complainant, which stood on his own lands;⁶ and where the accused installed an oil engine on his property and his neighbour complained that his (neighbour's) property was damaged by reason of vibration from the engine,⁷ it was held that this offence was not committed.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief causing damage to the amount of fifty rupees.

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

¹ *Moti Lal*, (1901) 24 All. 155.

² *Chanda*, (1905) 28 All. 204.

³ *Dharma Das Ghose v. Nusser-uddin*, (1886) 12 Cal. 660.

⁴ *Bhagiram Dome v. Abar Dome*, (1888) 15 Cal. 388.

⁵ *Rajcoomar Singh*, (1878) 3 Cal. 573.

⁶ *Chotually*, (1902) 4 Bom. L. R. 463.

⁷ *Punjaji Bagul*, (1934) 37 Bom. L. R. 96, 59 Bom. 177.

COMMENT.—This section is intended to prevent cruelty to animals and consequent loss to the owner.

'Maiming' refers to those injuries which cause the privation to the use of a limb or a member of the body.¹ 'Maiming' implies a permanent injury,² wounding is not necessarily maiming.

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox,¹ whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees.

COMMENT.—This section provides for enhanced punishment owing to the greater value of the animals mentioned therein.

1. 'Bull, cow or ox.'—According to the Madras High Court a 'calf' does not come within the terms bull, cow, or ox;³ but the Calcutta High Court has held that the words 'bull' and 'cow' in this section include the young of those animals. The section specifies the more valuable of the domestic animals, without any regard to age; but in respect of other kinds of animals not so specified the section will not apply unless the particular animal in question is shewn to be of the value of fifty rupees or upwards.⁴

Bull set at large according to religious usage.—Such a bull is not the subject of ownership by any person, as the original owner surrenders all his rights as its proprietor and gives it freedom to go whithersoever it chooses. It is therefore *nullius in terra*, and as such, cannot be the subject of mischief.⁵ But if there is not a total abandonment of control and property, the animal would not cease to be the private property of the owner. There is also a material distinction in principle between the case of an animal, property in which is wholly renounced or abandoned and allowed in accordance with superstitious or religious usage to roam at large free from control, and that of such an animal so abandoned and at large after dedication to a temple.⁶

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

COMMENT.—This section deals with diminution of water supply, e.g., the placing across a channel of an embankment. Section 277 applies if the water is

¹ *Fatthedin*, (1881) P. R. No. 33 Cal. 457.

² *Jeans*, (1884) 1 C. & K. 539.

³ *Cholay*, (1864) Mad. Unrep.

⁴ *Hari Mandle v. Jafar*, (1895) 22

⁵ *Romesh Chunder Sannyal v. Hiru Mondal*, (1890) 17 Cal. 852.

⁶ *Nalla*, (1887) 11 Mad. 145.

fouled so as to be unfit for use. This section applies equally to irrigation channels as to other sources of irrigation, such as tanks and ponds.

For a conviction under this section, there must be some infringement of right resting in some one by the act of the accused.¹

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river or channel.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a searnark, or any searnark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving or rendering less useful a light-house or sea-mark.

COMMENT.—This section is an extension of the principle laid down in s. 281. Sea-marks are very important in navigation and any tampering with them may lead to disastrous results.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, etc., a land-mark fixed by public authority.

COMMENT.—This section is similar to the last section but the punishment prescribed is not so severe because tampering with land-marks does not lead to disastrous results.

¹ *Ashutosh Ghosh*, (1920) 57 Cal. 897.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of ~~any~~ building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy house, etc.

COMMENT.—The section contemplates the destruction of a building. A 'building' is not necessarily a finished structure.¹ An unfinished house, of which the walls are built and finished, the roof on and finished, a considerable part of the flooring laid, and the internal walls and ceiling prepared ready for plastering, is a building.²

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden.

COMMENT.—The vessel must be a 'decked vessel' or a 'vessel of a burden of twenty tons or upwards.' This limitation is laid down to exclude small crafts of all kinds. The intention of the Legislature is to punish mischief committed on vessels which are likely to carry passengers.

438. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in section 437 committed by fire or explosive substance.

¹ *Manning*, (1871) L. R. 1 C. C. R. 338.

² *William Edgell*, (1867) 11 Cox 132.

COMMENT.—This section merely extends the principle laid down in the last section. It imposes higher penalty owing to the dangerous nature of the means used.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—This section punishes an act which is akin to piracy. As to what amounts to piracy, see p. 9.

440. Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession of another¹ with intent to commit an offence² or to intimidate, insult or annoy any person in possession³ of such property,

or, having lawfully entered into or upon such property, unlawfully remains there, with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

COMMENT.—The authors of the Code say : "We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it be attended with aggravating circumstances."¹

Ingredients.—The section requires—

- (1) Entry into or upon property in the possession of another.
- (2) If such entry is lawful, then unlawfully remaining upon such property.
- (3) Such entry or unlawful remaining must be with intent
 - (a) to commit an offence; or
 - (b) to intimidate, insult, or annoy any person in possession of the property.

¹ Note N, p. 168.

The use of criminal force is not a necessary ingredient.

1. 'Enters into or upon property' in the possession of another.'—'Property' in this section means immovable corporeal property, and not incorporeal property such as a right of fishery,¹ or a right of ferry.² A person plying a boat for hire within the prohibited distance from a public ferry cannot be said, with reference to such ferry, to commit criminal trespass.³

The possession must be actual possession of some person other than the alleged trespasser.⁴ The offence can only be committed against a person who is in actual physical possession of the property in question. If the complainant is not in actual possession of the property this offence cannot be committed.⁵ But the offence may be committed even when the person in possession of the property is absent provided the entering into or upon the property is done with intent to do any of the acts mentioned in the section. Where a person entered upon a field that had been leased, during the absence of the lessee, and ploughed it, and the lessor came to the spot on hearing of it to prevent the commission of such acts, it was held that that was not enough to exonerate that person from intention to annoy the lessee and that such a person could be convicted of criminal trespass.⁶ A man may be guilty of criminal trespass on the land of another without ever personally setting foot on it if, for example, he causes others to build on it against the wishes and in spite of the protest of its owner.⁷ The Rangoon High Court has dissented from this case on the ground that under the criminal law a principal can only be made responsible for and found guilty of the acts of his agent if it is proved that he has instigated or otherwise abetted the acts of the person who actually committed the crime. Where, therefore, a person acting in good faith and believing the land to be his gives to his tenant the right to possession of the land but does not order him to take it on his behalf, he cannot be convicted of trespass.⁸ Merely sending a servant to plough up land is not an entry by the master.⁹

Joint possession.—A prosecution for criminal trespass on the part of one co-owner against another co-owner will not lie unless there has been an ouster from possession or some destruction or waste of the common property.¹⁰ A joint owner of property is entitled to have joint possession restored to him in a civil Court; but he is not justified in taking the law into his own hands to recover possession. If he does so he is liable for criminal trespass.¹¹ A joint owner of land who enters upon the land with the intention or knowledge of doing a wrongful act commits criminal trespass.¹²

2. 'Intent to commit an offence.'—Criminal trespass depends on the intention of the offender and not upon the nature of the act. If, for instance, a person with intent to save his family and property from imminent destruction commits civil trespass on his neighbour's land, and cuts a portion of a dam belonging to his neighbour, he is not guilty of criminal trespass.¹³ 'Intention,' how-

¹ (*haru Nayiah*, (1877) 2 Cal. 354.

² *Muthra v. Jawahir*, (1877) 1 All.

527.

³ *Ibid.*

⁴ *Faujdar*, (1878) P. R. No. 28 of 1878; *Kunji Lal*, (1913) 12 A. L. J. R. 151.

⁵ *Bismillah*, (1928) 8 Luck. 661.

⁶ *Venkatesu v. Kesamma*, (1930) 54 Mad. 515.

⁷ *Ghasi*, (1917) 39 All. 722.

⁸ *Maung Nwe v. Maung Po Hla*, [1937] Ran. 246.

⁹ *Shwe Kun*, (1906) 3 L. B. R. 278.

¹⁰ *Hamin Khan*, (1881) 3 Mad.

¹¹ *Gopalrao*, (1908) 10 Bom. L. R. 285.

¹² *Ram Prasad*, (1911) 8 A. L. J. R.

¹³ *Madan Mandal*, (1913) 41 Cal. 662.

ever, must always be gathered from the circumstances of the case; and one matter which has to be considered is the consequences which naturally flow from the act, because a man is usually presumed to intend the consequences of his own act. That is only one element from which the Court has to discover the intention of the party who trespasses. Was the real intention to annoy, or was the real intention something else, and the annoyance a mere consequence, possibly foreseen, but not intended or desired? If it is the latter, there is no offence under the section.¹ The 'offence' referred to cannot be the offence of criminal trespass itself, but must be some other offence either under the Penal Code or under any special enactment.²

One S lawfully seized a cow belonging to the accused and had it impounded in the cattle-pound. The accused, the owner of the cow, proceeded to the cattle-pound, opened the lock, entered and drove off the cow after slightly injuring the watchman who attempted to prevent him. It was held that the accused was guilty of criminal trespass, as his act amounted to an entry upon the property in the possession of another person with intent (1) to commit an offence (i.e., an act which is made an offence by the Cattle Trespass Act), and (2) to intimidate the man in charge of the premises.³

3. 'Or to intimidate, insult or annoy any person in possession.'—Trespass is an offence *only* if it is committed with one of the *intents* specified in the section, and proof that a trespass committed with some other object was *known* to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction.⁴ There is a distinction between the phrases "with intent" and "with knowledge"; it must be proved that the accused had the intention to intimidate, insult or annoy when he made the entry, and it is not enough that the prosecution should ask the Court to infer that the entry is bound to cause intimidation, insult, or annoyance. A mere knowledge that the trespass is likely to cause insult or annoyance does not amount to an intent to insult or annoy.⁵

¹ The word 'intimidate' must be understood in its ordinary sense "to overawe, to put in fear, by a show of force or threats of violence." Where the accused came on the land of the complainant to oust him forcibly and by intimidation, that is to say, they entered upon the land with intent to intimidate the complainant and thereby to compel him to give up possession, it was held that they had committed criminal trespass.⁶

The word 'annoyance' must be taken to mean annoyance that would generally and reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual.⁷ Where a person claiming a title to property, whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have had an intent to annoy the person in possession, even though he had no primary desire to annoy, and his only object was to obtain possession for himself.⁸ Where the accused enclosed and cultivated a portion of a burial-ground, it was held that he had committed this offence as his act was calculated to cause annoyance to persons using the burial-ground.⁹ Where the accused entered into the complainant's

¹ *D'Cunha*, (1935) 37 Bom. L. R.

880, distinguishing *Luzman*, (1902)

26 Bom. 558, 4 Bom. L. R. 280.

² *Baldewa*, (1933) 56 All. 33.

³ *Bhola*, (1927) 8 Lah. 331.

⁴ *Vullappa v. Bheema Row*, (1917) 41 Mad. 156, F.B.

⁵ *Baldewa*, *supra*.

⁶ *T. H. Bird*, (1933) 13 Pat. 268.

⁷ *Gobind Prasad*, (1879) 2 All. 465, 467.

⁸ *Ram Saran*, (1906) P. R. No. 12 of 1906, F.B.; *Premam*, (1929) 11 Lah. 238.

⁹ (1871) 6 M. H. C. (Appx.) xxv.

house with intent to have illicit intercourse with his widowed sister, it was held that he was guilty of this offence as the illicit intercourse was bound to cause great annoyance to the complainant.¹ Where the accused broke open a lock and entered into a room which was in the possession of the complainant, behind the back of the latter, it was held that the intention to commit an offence, or to intimidate, insult or annoy was clearly inherent in the act of the accused.²

The words 'any person in possession', according to the Bombay High Court, do not mean only "a complainant in possession," there being no authority for taking the offence of mischief and trespass out of the general rule which allows any person to complain of a criminal act.³ But the Calcutta High Court has held that it must be proved that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure.⁴

4. 'Having lawfully entered into or upon such property, unlawfully remains there.'—The original entry may be lawful, but if the person entering remains on the property with the intent specified in the section he commits trespass. When a person armed with weapons went on a land of which he was the owner when no one else was there at the time and refused to vacate it, when called upon to do so by a person who had no right to the land. It was held that the owner did not remain on the land unlawfully and was not therefore guilty of the offence of criminal trespass.⁵

Bona fide claim.—If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right, but without any intention to intimidate, insult, or annoy, the person in possession, or to commit an offence, then although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence.⁶ Of two rival claimants, A and B, to some immovable property, including a certain shop, A was in possession of the shop through a tenant. The tenant, however, vacated the shop, whereupon B occupied and locked it up. It was held that A could not, at the time of the occurrence, be said to be in possession of the shop within the meaning of this section, and that the intention of B was not necessarily that required to constitute the offence of criminal trespass within the meaning of the said section.⁷ But the Lahore High Court has held that when a person, claiming a title to property, whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have had an intention to annoy the person in possession, within the meaning of this section, even though he had no primary desire to annoy and his only object was to obtain possession for himself.⁸

Cases.—Entry to make survey.—During the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the defendant. They went (some of them armed) and, without the permission of the defendant, in his absence, and when the defendant's servants objected to

¹ *Jiwan Singh*, (1908) P. R. No. 17 of 1908.

² *Jamna Das*, [1944] All. 754.

³ *Keshavlal*, (1896) 21 Bom. 536.

⁴ *Chandi Pershad v. Evans*, (1894) 22 Cal. 123, 130.

⁵ *Adalat*, (1945) 24 Pat. 519.

⁶ *Budh Singh*, (1879) 2 All. 101, 103.

⁷ *Moti Lal*, (1925) 47 All. 855.

⁸ *Preman*, (1929) 11 Lah. 238, following *Ram Saran*, (1906) P. R. No. 12 of 1906, F.B.

their action, persisted in their trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they were acting. It was held that their action amounted to criminal trespass.¹

Acts not held to be criminal trespass.—Where the accused secretly entered an exhibition building without a ticket, but without any of the intents specified in this section;² where a person effected an entry into a market through a bamboo fence instead of through the proper gate with intent to evade payment of market dues;³ where A having shot a deer near B's land followed it into B's land for the purpose of killing it although he was warned off the land beforehand;⁴ and where a Zamindar under the pretext that one of his tenants had left the village and abandoned his holding, took possession of the tenant's holding wrongfully,⁵ it was held that this offence was not committed.

442. Whoever commits criminal trespass by entering into¹ or remaining in any building,² tent or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

COMMENT.—The offence of criminal trespass may be aggravated in several ways. It may be aggravated by the way in which it is committed, and by the end for which it is committed.

1. 'Entering into.'—The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass.⁶

2. 'Building.'—What is a 'building' must always be a question of degree and circumstances; its ordinary and usual meaning is an inclosure of brick or stone work covered in by a roof.⁷ The mere surrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space itself into a building, and trespass thereon does not amount to house-trespass.⁸ A cattle enclosure, which was merely a piece of ground enclosed on one side by a wall and on the other three sides by a thorn-hedge, was held to be not a 'building'.⁹ But if the enclosure is for all practical purposes one of the rooms of the house and an integral part of the building, it will be a 'building' within the meaning of this section.¹⁰

CASES.—Presentation of petition of review so as to cause distress to person to whom it is presented.—C, a ratepayer, who had filed a petition against an assessment, which in his absence had been dismissed, entered into a room, where a Committee of Municipal Commissioners were seated hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman ordered him to leave the room,

¹ *Golap Pandey v. Boddam*, (1889) 16 Cal. 715.

⁶ *Vide* Explanation.

² *Mehervanji Bejanji*, (1869) 6 B. H. C. (Cr. C.) 6.

⁷ *Moir v. Williams*, [1892] 1 Q. B. 264, 270.

³ *Varthappa*, (1882) 5 Mad. 382.

⁸ *Palani Goundan*, (1896) 1 Weir 523.

⁴ *Chunder Narain v. Farquharson*, (1879) 4 Cal. 837.

⁹ *Kohmi*, (1914) P. R. No. 24 of 1914.

⁵ *Jangi Singh*, (1903) 20 All. 194; *Bazid*, (1904) 27 All. 298.

¹⁰ *Ismail*, (1925) 6 Lah. 463.

and, on his refusal to do so, he was turned out. Outside the room in the verandah he addressed the crowd complaining that no justice was to be obtained from the Committee. It was held that C did not commit any offence.¹

Entry not to commit offence is not house-trespass.—In a case the former Chief Court of the Punjab held that an entry into a cattle-pen to prosecute an intrigue with an unmarried woman of over sixteen years of age was not criminal trespass.² But subsequently it held that such an act would amount to annoyance if known and would, therefore, amount to trespass.³ The Madras and the Calcutta High Courts are of the opinion that such an act would not amount to criminal trespass.⁴

Bona fide dispute.—The complainant and the accused were neighbours. Their houses were divided by a wall, which the complainant claimed as his own, but which, according to the accused, was a party-wall. The accused gave a notice prohibiting the complainant from raising the height of the wall. The very next day the complainant raised the height. Whilst the complainant was absent, the accused went into his house and demolished the new addition to the wall. The accused were thereupon prosecuted for the offences of house-trespass and mischief under ss. 451 and 426. It was held that inasmuch as there was a *bona fide* claim of right by the accused to the wall in dispute and as the accused had entered into the complainant's house and pulled down the addition in his absence, the offences charged were not made out against the accused.⁵

443. Whoever commits house-trespass having taken precautions to conceal such house-trespass from some person lurking house-trespass. who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

COMMENT.—The authors of the Code say: "House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass: the latter we designate as house-breaking. Again, house-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious offence when committed by night than when committed by day. Thus we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night, and house-breaking by night.

"These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to (commit) a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a

¹ *Chandi Pershad v. Evans*, (1894) 22 Cal. 123.

² *Ramzan*, (1905) P. R. No. 28 of 1905.

³ *Jiwan Singh*, (1908) P. R. No. 17 of 1908.

⁴ *Pamba Rangadu*, (1896) 1 Weir 537; *Ambika Charan Sarkar*, (1906) 4 C. L. J. 169.

⁵ *Balkrishna Narhar*, (1924) 26 Bom. L. R. 978.

dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang robbery. Here A commits trespass in the worst way. B commits trespass with the worst object. In our provisions, we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment."¹

CASES.—Entry upon the roof of a building may be criminal trespass. But it cannot sustain a conviction for lurking house-trespass,² or for house-breaking.³

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

Lurking house-trespass by night.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

House-breaking.

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

¹ Note N, p. 168.

of 1887.

² *Alla Bakhsh*, (1886) P. R. No. 9

³ *Fazla*, (1890) P. R. No. 9 of 1890.

ILLUSTRATIONS.

(a) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

COMMENT.—Invasion of a person's residence should naturally be meted out with deterrent punishment. This section describes six ways in which the offence of house-breaking may be committed. Clauses 1 to 3 deal with entry which is effected by means of a passage which is not ordinary. Clauses 3 to 6 deal with entry which is effected by force. Where a hole was made by burglars in the wall of a house but their way was blocked by the presence of beams on the other side of the wall, it was held that the offence committed was one of attempt to commit house-breaking and not actual house-breaking, and illustration (d) to this section did not apply.¹

According to English law to constitute house-breaking there must always be an actual breaking of some part of the house by force or a breaking by construction of law, for example, by threat, fraud or conspiracy. Under the Code mere entry through a window not intended for human entrance is enough.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night."

House-breaking by night.

COMMENT.—The preceding section contains an elaborate definition of house-breaking. The addition in this section of the element of time turns the offence into 'house-breaking by night,' the equivalent of the crime of 'burglary' in English law. The analysis of this offence suggests a division of its ingredients into (1) the breaking; (2) the entry; (3) the place; (4) the time; and (5) the intent.

447. Whoever commits criminal trespass, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for criminal trespass.

¹ Ghulam, (1923) 4 Lah. 399.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, which may extend to one thousand rupees, or with both.

Punishment
for house-trespass.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in
order to commit offence
punishable with death.

COMMENT.—See pp. 32, 33 where a list of offences punishable with death is given.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in
order to commit offence
punishable with trans-
portation for life.

COMMENT.—See p. 32 where a list of offences punishable with transportation is given.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in
order to commit offence
punishable with impri-
sonment.

COMMENT.—This section is similar to ss. 449 and 450. It provides punishment for house-trespass committed with intent to commit an offence punishable with imprisonment. Where the accused was convicted of house-breaking, his object being to have sexual intercourse with the complainant's wife, it was held that the conviction was valid.¹

452. Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after
preparation for hurt,
assault, or wrongful re-
straint.

COMMENT.—Section 451 envelopes the provisions of this section. But the Legislature has enacted this section to provide higher punishment where house-trespass is committed in order to cause hurt, or to assault, or to wrongfully restrain any person.

¹ (1875) 8 M. H. C. (Appx.) vi.

453. Whoever commits lurking house-trespass or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

COMMENT.—This section provides penalty for the offences defined in ss. 448 and 444.

In all “house-breaking” there must be “house-trespass,” and in all “house-trespass” there must be “criminal trespass.” Unless, therefore, the intent necessary to prove “criminal trespass” is present, the offence of house-breaking or house-trespass cannot be committed.

454. Whoever commits lurking house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offence intended to be committed is theft the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.

COMMENT.—This is an aggravated form of the offence described in the last section. The latter portion of this section is framed to include the cases of house-trespassers and house-breakers by night who have not only intended to commit, but have actually committed, theft.¹

455. Whoever commits lurking house-trespass, or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.

COMMENT.—The relation between this section and s. 453 is the same as that between ss. 452 and 450. This section is similar to s. 458. The only difference is that the trespass here is committed by day, whereas under s. 458 it is committed during night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

COMMENT.—Lurking house-trespass or house-breaking is ordinarily punishable under s. 453; but when it is committed at night this section is applicable.

¹ *Zor Singh*, (1887) 10 All. 146. of 1886.
See *Khuda Bakhsh*, (1886) P. R. No. 10

The intent necessary to prove 'criminal trespass' must be present. Where the accused persons, execution creditors, broke open the complainant's door before sunrise with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, it was held that as they were not guilty of the offence of criminal trespass the conviction must be quashed.¹

CASES.—Scaling a wall.—Effecting an entrance into a house at night by scaling a wall was held to constitute house-breaking by night.²

Departure through doorway.—The accused entered into a house at night and effected his departure after knocking down a person who stood in the doorway. It was held that the conviction for house-breaking by night was good.³

Entry to commit adultery.—Where a stranger, uninvited and without any right to be there, effected an entry in the middle of the night into the sleeping apartment of a woman, a member of a respectable household, it was held that the Court should presume that the entry was made with such an intent as was provided for by this section.⁴ The accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant crying out that a thief was taking away her neck ornament. It was held that the accused was properly convicted under this section.⁵ But where the accused had entered with the consent of the widowed daughter-in-law of the complainant, a woman of loose character, it was held that he was not guilty under this section.⁶ At night time the accused unchained the outer door of the courtyard of M's house and was passing through it in order to reach the adjoining house occupied by a married woman K (with whom he had intimacy) with the object of committing adultery with her when he was seen by M's wife who raised an alarm and he was arrested while in M's courtyard. It was held that the accused was guilty of criminal trespass as he entered into or upon property in the possession of another with intent to commit the offence of adultery, and as he entered at night he was guilty of lurking house-trespass by night.⁷ Thus a person who enters upon property with intent to commit an offence on that property, or on any other property, or with respect to a person who is, or is not, in possession of the property entered upon, is guilty.⁸

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.

¹ *Jotharam Davay*, (1878) 2 Mad. 30.

² *Emdad Ally*, (1865) 2 W.R. (Cr.) 65.

³ *Solai*, (1892) 1 Weir 530.

⁴ *Koilash Chandra Chakrabarty*, (1889) 16 Cal. 657; *Balmakand Ram v. Ghansamram*, (1894) 22 Cal. 391; *Premanundo Shaha v. Brindaban Chung*, (1895) 22 Cal. 994; *Karali Prasad Guru*, (1916) 44 Cal. 358;

Ram Rang, (1904) P. R. No. 18 of 1905.

⁵ *Ishri*, (1906) 26 A. W. N. 279.

⁶ *Lajje Ram*, (1898) P. R. No. 12 of 1898.

⁷ *Mohammad Yar*, (1898) 19 Lah. 462, F.B.

⁸ *Ibid.*, p. 409.

COMMENT.—The offence under this section is an aggravated form of the offence described in the preceding section.

Adultery.—Where, on a charge under this section, it was proved to the satisfaction of the Court that the accused did enter into the complainant's house in order to have sexual intercourse with a woman who, he knew, was the wife of the complainant, and further that he did so without the husband's consent, and the accused was convicted, it was held that the conviction was proper. It was not necessary that the complainant should bring a specific charge of adultery.¹ The omission on the part of the husband to prosecute for adultery does not absolve the offender from criminal liability under this section.²

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.

COMMENT.—This section is similar to ss. 452 and 455.

It only applies to the house-breaker who actually has himself made preparation for causing hurt to any person, etc., and not to his companions as well who themselves have not made such preparation.³

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

COMMENT.—The offence under this section is an aggravated form of the offence described in the preceding section.

This and the following section provide for a compound offence, the governing incident of which is that either a 'lurking house-trespass' or 'house-breaking' must have been completed in order to make a person, who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under those sections.⁴

The grievous hurt must be caused, or the attempt must be made, during the time that the house-breaking is being committed, and not after that offence is completed, and the offender has left the premises.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such offence shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

¹ *Kangla*, (1900) 23 All. 82.

² *Bandhu*, (1894) Unrep. Cr. C. 689.

³ *Ghulam*, (1923) 4 Lah. 390.

⁴ *Ismail Khan*, (1886) 8 All. 649.

mitting such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—This section deals with the constructive liability of persons jointly concerned in committing 'lurking house-trespass' or 'house-breaking by night' in the course of which death or grievous hurt to any one is caused. It is immaterial who causes death or grievous hurt. Every person jointly concerned in committing such house-trespass or 'house-breaking shall be punished in the manner provided in the section.

The words "at the time of the committing of" are limited to the time during which the criminal trespass continues which forms an element in house-trespass, which is itself essential to house-breaking, and cannot be extended so as to include any prior or subsequent time.¹ If the offender cause grievous hurt while running away, he will not be punishable under this section.²

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open receptacle containing property.

COMMENT.—This and the following section provide for the same offence. As soon as the receptacle is broken open or unfastened the offence is complete.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

463. Whoever makes any false document¹ or part of a document, with intent to cause damage or injury to the public or to any person,² or to support any claim or title,³ or to cause any person to part with property,⁴ or to enter into any express or implied contract, or with intent to commit fraud⁵ or that fraud may be committed, commits forgery.

¹ *Muhammad*, (1921) 2 Lah. 342.

² *Ibid.*

Making a false document.

464. A person is said to make a false document—

First.—Who dishonestly or fraudulently⁶ makes,⁷ signs, seals or executes⁸ a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed;⁹ or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

ILLUSTRATIONS.

(a) A has a letter of credit upon B for Rs. 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase-money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order" and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

ILLUSTRATIONS.

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable, here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors; and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

ILLUSTRATION.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for forgery.

COMMENT.—The offence of forgery is defined in ss. 463 and 464 of the Code. Under s. 463 the making of a false document with any of the intents therein mentioned is forgery, and s. 464 sets forth when a person is said to make a 'false document' within the meaning of the Code.

The definition of forgery in the Code is not as simple and clear as the definition of forgery in common law. Forgery in England is not defined by statute. Forgery in common law is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right.

Scope.—Section 463 contemplates two classes of intents, and it is clear that it is not an essential quality of the fraud mentioned in the section that it should result in or aim at the deprivation of property.¹

Ingredients.—The elements of forgery are—

1. The making of a false document or part of it.
2. Such making should be with intent
 - (a) to cause damage or injury to (i) public, or (ii) any person; or
 - (b) to support any claim or title; or
 - (c) to cause any person to part with property; or
 - (d) to enter into any express or implied contract; or
 - (e) to commit fraud or that fraud may be committed.

1. 'Makes any false document.'—To constitute forgery the simple making of a 'false document' is sufficient. What amounts to making of a 'false document' is explained in s. 464. It is not necessary that the document should be published or made in the name of a really existing person (*vide* Explanation 2). But it must either appear on its face to be, in fact, one which, if true, would possess some legal validity, or, in other words, must be legally capable of effecting the fraud intended.² A writing, which is not legal evidence of the matter expressed, may yet be a 'document' if the parties framing it believed it to be, and intended it to be, evidence of such matter.³ Thus forging a deed will amount to this offence, although a statute requires the deed in a particular form, or to comply with certain requisites, and the forged deed is not in that form or does not comply with those requisites.⁴ Letters or marks imprinted on trees and intended to be used as evidence that the trees had been

¹ *Abbas Ali*, (1896) 25 Cal. 512, 373.
521, F.B., overruling *Haradhan*, (1892) 19 Cal. 380.

² *Jawala Ram*, (1895) P. R. No. 12 of 1895; *Badan Singh*, (1922) 3 Lah. 255.

³ *Shifait Ali's case*, (1868) 2 Beng. L. R. 12 (Cr.).

⁴ *Lyon's Case*, (1818) Russ. & Ry.

passed for removal by the Ranger of a forest, are a document within the meaning of s. 29. A person counterfeiting such marks on a tree is guilty of making a false document within the meaning of this section.¹ ✓

The antedating of a document is not forgery, unless it has or could have operated to the prejudice of some one.²

2. 'To cause damage or injury to the public or to any person.'—The damage or injury must be intended to be caused by the false document to the public or any individual. Thus, a police-officer who alters his diary so as to show that he had not kept certain persons under surveillance does not commit forgery, inasmuch as there is no risk of loss or injury to any individual and the element of fraud as defined in s. 25 is absent.³ It is the intent to cause damage or injury which constitutes the gist of this offence. It is immaterial whether damage, injury or fraud is actually caused or not.⁴ ✓

To tamper with a proceeding in a Court of justice in order to obtain from that Court a decision or order, which it otherwise would not make, is as much a public mischief as to attempt to secure the unauthorised release of a prisoner from jail or to obtain for an unqualified person credentials entitling him to practise as a surgeon or to navigate a ship.⁵ ✓

3. 'Support any claim or title.'—Even if a man has a legal claim or title to property, he will be guilty of forgery if he counterfeits documents in order to support it. See illustrations (f), (g), (h) and (i). An actual intention to convert an illegal or doubtful claim into an apparently legal one is dishonest and will amount to forgery.⁶

The term 'claim' is not limited in its application to a claim to property. It may be a claim to anything, as, for instance, a claim to a woman as the claimant's wife, a claim to the custody of a child as being the claimant's child, or a claim to be admitted to attendance at a law class in a college, or to be admitted to a university or other examination, or a claim to the possession of immoveable or any other kind of property.⁷

4. 'To cause any person to part with property.'—It is not necessary that the property with which it is intended that the false document shall cause a person to part, should be in existence at the time when the false document was made. For example, if A gave an order to B to buy the material for making and to make a silver tea service for him, and C, before the tea service was made or the materials for making it had been bought, were to make a false letter purporting, but falsely, to be signed by A, authorizing B to deliver to D the tea service when made, C would have committed forgery within the meaning of s. 463 by making that false document with intent to cause B to part with property, namely, the tea service, when made.⁸ A written certificate has been held to be 'property' within the meaning of this section.⁹ ✓

5. 'Intent to commit fraud.'—The offence of forgery is complete if a document, false in fact, is made with intent to commit a fraud, although it may not have been made with any one of the other intents specified in s. 463.¹⁰ ✓

¹ *Krishtappa*, (1925) 27 Bom. L. R. 599.

⁶ *Ibid.*

⁷ *Soshi Bhushan*, (1903) 15 All. 210, 217.

² *Gobind Singh*, (1926) 5 Pat. 573.
³ *Sanjiv Ratnappa*, (1932) 34 Bom. L. R. 1090, 56 Bom. 488.

⁸ *Ibid.*, p. 218.

⁹ *Ibid.*, p. 218.

⁴ *Kalyanmal*, [1937] Nag. 45.

¹⁰ *Kotamaraju Venkatrayadu*, (1905)

⁵ *Mahesh Chandra Prasad*, (1943) 22 Pat. 292.

28 Mad. 90, F.B.

Where there is an intention to deceive and by means of the deceit to obtain an advantage there is fraud, and if a document is fabricated with such intent it is a forgery.¹ The majority of the Judges of the Madras High Court in a full bench case seem to be of opinion that an intention to secure a benefit or advantage to the party deceiving by means of the deceit constitutes an intention to defraud.² The expression 'intent to defraud' implies conduct coupled with intention to deceive and thereby to injure; in other words, 'defraud' involves two conceptions, namely, deceit and injury to the person deceived. The addition of a name to the list of attesting witnesses of an instrument which need not in law be attested is held not to amount to making a false document.³

Deprivation of property, actual or intended, does not constitute an essential element of an intention to defraud.⁴

Intent to defraud any particular person not necessary.—A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, will be sufficient to support a conviction.⁵ It is not necessary to defraud a particular person, if the consequence of the act would necessarily or possibly be to defraud any person, but there must, at all events, be a possibility of some person being defrauded by the forgery.⁶ It is not necessary that there should have been some person defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act. Suppose a person with a good account at his bankers, and a friend, with his knowledge, forges his name to a cheque either to try his credit, or to imitate his handwriting, there would be no intent to defraud, though there would be parties who might be defrauded; but where another person has no account at his bankers, but a man supposes that he has, and on that supposition forges his name, there would be an intent to defraud in that case, although no person could be defrauded.⁷

CASES.—Intent to defraud.—If a person have the authority of another to write the name of that other to an acceptance it is no forgery; neither is it if he had no such authority, provided that he had fair ground for considering that he had such authority, and did so consider, and wrote the acceptance, not meaning to defraud or injure any one.⁸ Even if there is no previous authority of the person whose name is put on a bill of exchange, still if that person has been informed of it at the time and he does not repudiate it, it will not amount to forgery.⁹ But if A put the name of B on the bill of exchange as acceptor without B's authority, expecting to be able to meet it when due, or expecting that B will overlook it, this is forgery.¹⁰ Similarly, if a person having the blank acceptance of another, be authorized to write on it a bill of exchange for a certain limited amount, and he writes on it a bill of exchange for a larger amount, with intent to defraud either the acceptor or any other person, this is forgery.¹¹ Where in a proceeding in a Court of justice the accused having an access to the record, inserted a document on the record and made interpolation in the list of documents, it was held that there

● *Muhammad Saced Khan*, (1898) F.B.
21 All. 113, 115.

² *Kotamraju Venkatrayadu*, (1905) 28 Mad. 90, F.B. The majority of the full bench have expressed their non-concurrence with the case of *C. Srinivasan*, (1902) 25 Mad. 726.

³ *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.

⁴ *Abbas Ali*, (1896) 25 Cal. 512,

⁵ *Dhunum Kazei*, (1882) 9 Cal. 53.

⁶ *Marcus*, (1846) 2 C. & K. 356.

⁷ *Nash*, (1852) 2 Den. Cr. C. 493.

⁸ *Parish*, (1837) 8 C & P. 94.

⁹ *Smith*, (1862) 3 F & F. 504.

¹⁰ *Forbes*, (1885) 7 C. & P. 224.

¹¹ *Hart*, (1836) 7 C & P. 652, (1837) 1 Mood. 486.

was an intent on the part of the accused to commit a fraud on the Court and also, perhaps, to cause damage to the other side, that it was immaterial that the deception did not succeed, or that if it had succeeded it could not have exposed the accused to an action for damages, and that the accused was guilty of forgery.¹

Copy.—The offence of forgery may be committed by a person who fabricates a false document purporting to be a copy of another document for the purpose of the same being used in evidence. The accused, in a suit for possession of land, to support his pedigree, put in a deed of dower, and a deed of security purporting to be copies of the original document filed in a previous suit, but it was found that both the copies contained two more names of witnesses than the original. It was held that the accused had committed forgery.² Similarly a person was convicted of using as genuine a document which he knew to be forged, though he, in the first instance, produced only a copy of it.³ The Madras High Court has held that a copy of a false document is not a false document within the meaning of this section.⁴ The Patna High Court has laid down that the making of a copy of a forgery does not constitute forgery unless the maker of the copy was authorized to make the copy.⁵

Section 464.—This section says how a 'false document' is made.

6. 'Fraudulently.'—This word is used in ss. 471 and 464 together with the word 'dishonestly' and presumably in a sense not covered by the latter word. If, however, it be held that 'fraudulently' implies deprivation, either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word 'dishonestly' and its use would be mere surplusage. So far as such a consideration carries any weight, it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to transactions of which deprivation of property forms a part.⁶ Those decisions which proceed on the ground that an act is not fraudulent unless it causes or is intended to cause loss or injury to some one would seem to take too narrow a view of the meaning of the word 'fraudulently' as used in the Code.⁷

7. 'Makes.'—"The 'making' of a document, or part of a document, does not mean 'writing' or 'printing' it, but signing or otherwise executing it; as in legal phrase we speak of 'making an indenture' or 'making a promissory note,' by which is not meant the writing out of the form of the instrument, but the sealing or signing it as a deed or note. The fact that the word 'makes' is used in the section in conjunction with the words 'signs,' 'seals' or 'executes,' or 'makes any mark denoting the execution,' &c. seems to me very clearly to denote that this is its true meaning. What constitutes a false document or part of a document, is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some person to the document, or part of a document, knowing that the seal or signature is not his, and that he gave no authority to affix it. In other words, the falsity consists in the document, or part of a document, being signed or sealed

¹ *Mahesh Chandra Prasad*, (1943) M. L. J. 584.

22 Pat. 292.

² *Essan Chunder Dutt v. Baboo Prannauth Chowdry*, (1868) Marsh. 270, W. R. (F. B.) 71. See *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.

³ *Nujum Ali*, (1866) 6 W. R. (Cr.) 41.

⁴ *Gopalakrishna Heggade*, (1910) 20

⁵ *Lachman Lal*, (1918) 4 P. L. J. 16.

⁶ *Abbas Ali*, (1896) 25 Cal. 512, 521, F.B., overruling *Haradhan*, (1892) 19 Cal. 380.

⁷ *Kotamraju Venkatrayadu*, (1905) 28 Mad. 90, 118, F.B., *contra*, *Subrah-*

mania Ayyar, J.

with the name or seal of a person who did not in fact sign or seal it."¹ The Bombay High Court has held, distinguishing this case, where the accused counterfeited marks on a tree, that his act amounted to making a false document.²

8. 'Signs, seals or executes.'—Signing or sealing a document completes its execution. Putting a seal to a genuine signature to a document which is invalid without a seal is a forgery.³ Putting the name of a painter upon the copy of one of his pictures in order that it may be passed off as the original will be forgery under the Code, though this is held to be cheating under the English law.⁴

9. 'At a time at which he knows that it was not made, signed, sealed or executed.'—Antedating a document constitutes forgery.⁵ It is forgery to make a deed fraudulently with a false date, when the date is a material part of the deed, although the deed is in fact made and executed by and between the persons by and between whom it purports to be made and executed.⁶ But the antedating of a document is not forgery, unless it has or could have operated to the prejudice of any one. Where, therefore, a hand-note of a certain date bore the genuine thumb impression of the executant, but it was found in fact to have been executed subsequently, and there was absence of evidence that the antedating by the creditor was done with the object of making any wrongful gain to himself or causing wrongful loss to the executant, it was held that the necessary element of fraud or dishonesty was wanting and the offence of forgery was not committed.⁷

CASES.—False document should have been actually made.—Where a person gave orders for the printing of certain receipt forms similar to those used by a certain company, and corrected the proofs of the same, it being his intention to use the receipt forms in order to commit a fraud, it was held that he could not be convicted of forgery until one of the printed forms had been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document; until a form had been converted into a document, all that was done consisted in mere preparation for the commission of an offence.⁸ This case has not been followed by the Allahabad⁹ and the Bombay¹⁰ High Courts. Whether any given act or series of acts amounts to an attempt of which the law will take notice or merely to preparation is a question of fact in each case.

False entries to commit fraud.—Where the accused was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts, instead of making this entry as requested, he entered in a language not known to the complainant that the sum had been paid to the complainant, it was held that he had committed not forgery but an attempt to cheat, because there was nothing on the face of that entry to make it appear that the writing was made by or by the authority of the complainant within the meaning of s. 464.¹¹ Similarly, where a creditor made an entry in his own account book, without the sanction of the debtor, that if a particular sum was not paid as agreed upon, the creditor would take 1½ times the principal, including interest, it was held that no false document was

¹ Per Garth, C. J., in *Riasat Ali*, (Cr.) 23. (1881) 7 Cal. 352, 355.

² *Krishappa*, (1925) 27 Bom. L. R. 599.

³ *Collins*, (1844) 1 Cox 57.

⁴ *Closs*, (1857) 7 Cox 494.

⁵ *Sookmoy Ghose*, (1868) 10 W. R.

⁶ *Ritson*, (1869) L. R. 1 C.C.R. 200.

⁷ *Gobind Singh*, (1926) 5 Pat. 578.

⁸ *Riasat Ali*, (1881) 7 Cal. 352.

⁹ *R. MacCrea*, (1893) 15 All. 178.

¹⁰ *Krishappa*, sup.

¹¹ *Kunju Nayar*, (1888) 12 Mad. 114.

made by the creditor within the meaning of s. 464. As the entry did not operate to impose any liability to pay interest upon the debtors it could not cause damage or injury to the debtors.¹

Personation at examination.—A falsely represented himself to be B at a University Examination, got a hall ticket under B's name and headed and signed answer papers to questions with B's name. It was held that A was guilty of forgery and cheating by personation.²

Fabricating letter or certificate.—The accused, who was a copyist in the Sub-Divisional Office at B, applied for a clerkship then vacant in that office. An endorsement on his application, recommending him for the post and purporting to have been made by the Sub-Divisional Officer at B, was found to have been falsely made by the accused. The application was accompanied by a letter also fabricated by the accused, purporting to be from the Collector to the Sub-Divisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-Divisional Officer, having some suspicions as to the genuineness of this letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it, and this being posted in the local post office the accused fabricated a third document, purporting to be a letter from the Sub-Divisional Officer to the Postmaster asking him to stop the despatch of the demi-official letter. It was held that the accused had committed forgery with regard to the first two documents, but with regard to the third, it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of s. 464 because he made it to screen himself from fraud.³ The accused applied to the Superintendent of Police at Poona for employment in the Police force. In support of his application he presented two certificates which he knew to be false. One of these certificates was a wholly fabricated document, whilst the other was altered by several additions made subsequently to the issue of the certificate. It was held that the accused was guilty of offences under ss. 463 and 471.⁴ Where a candidate for the Matriculation-examination of the University of Madras, for the purpose of being admitted to the Examination, forwarded to the Registrar of the University a certificate that he was of good character and that he had completed his twentieth year which purported to be signed by the Headmaster of a recognised school, but was, in fact, not signed by him but was signed by the candidate in his own handwriting, it was held that the certificate was a forged document within the meaning of ss. 467 and 464.⁵ A person lawfully entitled to possess arms and ammunition, signed the prescribed certificate of purchase of the same in the name of another with an address not his own, and thereby deceived the gunsmith and the Government and defeated the object of the certificate, it was held that he was guilty of forgery.⁶

Conviction for abetment when it is proved that accused himself fabricated document in his custody.—A Police Constable's character and service roll in his custody was found to have been tampered with in this way, that a page, apparently containing unfavourable remarks to the Constable, had been taken out, and a new page with favourable remarks, purporting to have been written and signed by various superior officers of the police, had been inserted in its place, the intent being to

¹ *Badan Singh*, (1922) 3 Lah. 373.

⁴ *Khandusingh*, (1896) 22 Bom. 768.

² *Appasami*, (1889) 12 Mad. 151;

⁵ *Kolamraju Venkatrayadu*, (1905)

Ashwini Kumar Gupta, [1937] 1 Cal. 71.

28 Mad. 90, F.B.

⁶ *Causley*, (1915) 43 Cal. 421.

³ *Abdul Hamid*, (1886) 13 Cal. 349.

favour the chances of his promotion ; it was held that this interpolation amounted to forgery, but that inasmuch as it was not proved that the Constable himself prepared and inserted the false page, he was guilty of abetment only.¹

Clause second.—This clause requires dishonest or fraudulent cancellation or alteration of a document in any material part without lawful authority after it has been made or executed by a person who may be living or dead.

Where the date in a bond was altered, even though the alteration was not required to bring the claim within limitation,² or the document was not necessary for the case of the party using it,³ this offence was held to have been committed. But where the vendees of a plot of land altered the number by which the land was described in the deed of sale, because such number was not the right number, and used it as evidence in a suit, the alteration of the deed was held not to amount to forgery as the intention to cause wrongful loss or wrongful gain or to defraud was wanting.⁴ Similarly, where the date of a document, which would otherwise not have been presented for registration within time, was altered for the purpose of getting it registered, the offence committed was not forgery but fabricating false evidence under s. 192.⁵

The alteration must be in a material part of the document. Thus the interpolation of the name of a person as an attesting witness to a document not required by law to be attested subsequent to its execution and registration is not an alteration of the document in a material part.⁶

Clause third.—This clause deals with cases where the person making the document is not supposed to know its contents owing to unsoundness of mind or intoxication or deception.

Where the accused obtained a genuine signature upon a false document, by inserting the document in a heap of papers placed for signature before the person signing it, it was held that the accused had not committed an offence under this section as no deception was practised on the person signing it to prevent him from knowing the nature of the document.⁷

Explanation 1.—There may be a sufficient falsity in a man's merely signing his own name, if he do this in order that it may be mistaken for the signature of another person of the same name. If a bill of exchange payable to A or order get into the hands of another person of the same name as the payee, and such person, knowing that he was not the real person in whose favour it was drawn, endorse it, he is guilty of forgery.⁸

Explanation 2.—This Explanation makes it clear that a document will be forgery if it is a false document even in the name of a fictitious person. To support a charge of forgery it is wholly immaterial whether the name forged is that of a fictitious person who never existed or of a real person. It is as much a forgery in the one case as in the other provided the fictitious name is assumed for the purpose of fraud in the particular case under trial. There is, however, no doubt that an intention to defraud is an essential ingredient ; but it is sufficient to show that there was an intention to defraud generally. Whether there was an intention to defraud or not

¹ *Muhammad Saeed Khan*, (1898) 21 All. 113. ⁵ *Mir Ekhar Ali*, (1880) 6 Cal. 482.

² *Ram Narain*, (1881) P. R. No. 14 of 1881. ⁶ *Surendra Nath Ghosh*, (1910) 14 C. W. N. 1076.

³ *Daya Ram*, (1885) P. R. No. 16 of 1885. ⁷ *Nujeebutoollah*, (1868) 9 W. R. (Cr.) 20.

⁴ *Fateh*, (1882) 5 All. 217. ⁸ *Mead v. Young*, (1790) 4 T. R. 28.

is a question of fact to be determined with reference to the special circumstances of each case.¹

Where the accused, Robert Martin, in payment for a pony and cart purchased by him from the prosecutor, drew a cheque in the name of William Martin in the presence of the prosecutor upon a bank at which he, the accused, had no account, and gave it to the prosecutor as his own cheque drawn in his own name, it was held that this amounted to cheating and not forgery.² Where the accused put the drawer's signature on a cheque, with the intention of causing it to be believed that the signature was his own and not that of another person, by whom or by whose authority he knew it was not signed, it was held that there was no making of a false document within the first clause of s. 464, and that no offence under ss. 467, 468 and 471 was committed by the accused.³ If a person give a note or other security as his own note or security, and the credit thereupon be personal to himself without any relation to another, his signing such a note with a fictitious name may indeed be a cheat, but will not amount to forgery: for in that case it is really the instrument of the party whose act it purports to be, and the creditor had no other security in view.⁴ But if a person authorize another to sign a note in his name, dated at a particular place, and made payable at a banker's; and the person in whose name it is drawn, represented it to be the name of another person, with intent to defraud, and no such person as the note and the representation import, exists, this is forgery.⁵ Signing a bill in an assumed name is a forgery, if the name was assumed to defraud the person to whom such bill is given, though such person would equally have taken the bill had the accused used his real name.⁶ The forged signature in a document of an idol would not make it any the less a forged document. Because an idol is a juridical person capable of owning property and is therefore a 'person' within the meaning of s. 11.⁷

Document made to conceal previous dishonest or fraudulent, or negligent act.—If the intention with which a false document is made is to conceal a fraudulent or dishonest act, which has been previously committed, that intention cannot be other than an intention to commit fraud; and if the intention is to commit fraud, the making of a false document with that intention will come within the definition of forgery.⁸ The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of s. 477A inasmuch as the intention is to defraud.⁹ A debtor who forges a release to screen himself from liability to pay the debt is guilty of forgery because he intends by the forgery to cover a dishonest purpose.¹⁰ Where a writing was prepared by a process-server with false signatures in order to defraud a District Munsif into excusing his delay in returning processes, and his absence from duty, it was held to be forgery.¹¹

Joint act.—If several persons combine to forge an instrument, and each exe-

- ¹ *Pera Raju*, (1889) 18 Mad. 27, Cal. 313, 321; *Balkrishna*, (1918) 15 Bom. L. R. 708, 37 Bom. 666; *Ragho Ram*, (1933) 55 All. 786, dissenting from *Jiwanand*, (1882) 5 All. 221, and *Girdhari Lal*, (1886) 8 All. 653.
- ² *Martin*, (1870) 5 Q. B. D. 34.
- ³ *Martindale*, (1924) 52 Cal. 347.
- ⁴ 2 East P. C. 961.
- ⁵ *Parke's Case*, (1796) 2 Leach 775.
- ⁶ *Rash Behari Das*, (1908) 35 Cal. 450.
- ⁷ *Francis' Case*, (1811) Russ. & Ry. 209.
- ⁸ *Sabapati*, (1888) 11 Mad. 411.
- ⁹ *Vadivelu*, [1944] Mad. 685.
- ¹⁰ *Kamatichinatha Pillai*, (1919) 42 Mad. 558.
- ¹¹ *Lolit Mohan Sarkar*, (1894) 22

cutes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals.¹ Each is a principal, though he does not know by whom the other parts are executed, and though it is finished by one alone, in the absence of others.² Thus, the makers of the paper and plate respectively for the purpose of forging a note, afterwards filled up by a third person, are principals in the forgery with that person.³

Abetment.—A person taking an active part in the preparation of a document, but no part in the forgery of the name of an alleged executant, does not commit forgery, but simply abets the offence.⁴ To prepare in conjunction with others a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery, or an attempt to commit it, but would amount to abetment.⁵

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section applies to cases where a certificate or a document is forged by a person with a view to make it appear that it was duly issued by a public office, e.g., forging a marriage certificate.⁶ This section may be compared with s. 167.

Copy.—Where a person who is bound to give a true copy of any document gives a true copy of such document, he cannot be convicted of forgery punishable under this section, merely because the original of which he gives a true copy contains a statement which is false, and is known or believed by him to be such. As the original was not forged by the person giving the copy, he could not be convicted of forgery.⁷

Fraudulent intent must exist in forger's mind only.—A person who, at the request of another, sent to trap him, fabricates a document purporting to be a notice under the seal and signature of a Deputy Collector, he being informed that the notice was required by such other person for the purpose of being used in a pending suit (there being, however, in reality no such suit in existence) is guilty of forgery, it not being necessary that the intention of fraudulently using the document should exist in the mind of any other person than the person fabricating the document.⁸

¹ *Bingley's Case*, (1821) Russ. & Mad. 4. Ry. 446.

² *Kirkwood's Case*, (1831) 1 Mood. 304.

³ *Dade's Case*, (1831) 1 Mood. 307.

⁴ *Kashi Nath Naek*, (1897) 25 Cal. 207.

⁵ *Padala Venkatasami*, (1881) 3

Mad. 4.

⁶ *Juggun Lall*, (1880) 7 C. L. R. 356.

⁷ *Marigawda*, (1891) Unrep. Cr. C. 583.

⁸ *Haradhan Maiti*, (1887) 14 Cal. 513, F.B.

Alteration or mutilation of Government papers.—A Government correspondence in which accused Nos. 2 and 3 were interested was kept with a clerk by his superior officer. During the absence of the clerk from his house, accused No. 1, another clerk, removed the correspondence without any one's consent. It was kept for some time with the pleader of accused Nos. 2 and 3 and later it was stealthily replaced from where it was taken. It was afterwards discovered that some papers had disappeared from the correspondence, whilst others had either been mutilated or altered. It was held that accused Nos. 2 and 3 were punishable under this section and s. 193 in respect of the alteration of the document.¹

467. Whoever forges a document which purports to be a valuable security, or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—The offence under this section is an aggravated form of the offence described in the preceding section. The forged document must be one of those mentioned in the section.

CASES.—An unregistered document, though not a valuable security until the registration is completed, still purports to be a valuable security within the meaning of this section.² A blank paper, or a bond barred by limitation, is not a document of the kind described in the section.³ The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, will not authorize the delivery of moveable property, is not punishable under this section.⁴

An agreement in writing, which purported to be entered into between five persons, was signed by only two of them; it was altered by the addition of some material terms by the accused, who was one of the two executants, without the consent or knowledge of the other executant and was not signed by the other parties to the agreement. The accused was in possession of the instrument which was altered by him. It was held that he was guilty of forgery of a valuable security under this section, or being in possession of a forged document under s. 474.⁵ A person who received money from a postman under a false representation that he was the payee when in fact he was not, and signed the postal acknowledgment in the name of the payee, was held to have committed an offence under this section.⁶ Where the accused fraudulently brought into existence a registered sale deed, said to have been executed by the widow of a person, intending to deceive and also to injure

¹ *Vallabhram*, (1925) 27 Bom. L. R. 1391.

² *Kashi Nath Naeck*, (1897) 25 Cal. 207; *Ramasami*, (1888) 12 Mad. 148.

³ *Rughoonundun Putromwees*, (1871) 15 W. R. (Cr.) 19.

⁴ *Naro Gopal*, (1868) 5 B. H. C. (Cr. C.) 56.

⁵ *Ramaswami Ayyar*, (1917) 41 Mad. 589.

⁶ *Jogidas*, (1921) 24 Bom. L. R. 99.

the reversioners of that person, it was held that they were guilty under this section.¹

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section punishes forgery committed for the purpose of cheating, e.g., falsification of account books for deception,² or forgery of a school attendance register for the purpose of obtaining a Government grant.³

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—A person who forges a document for the purpose of harming the reputation of another commits an offence under this section and also under s. 500 (defamation).

470. A false document made wholly or in part by forgery is designated “a forged document.”

471. Whoever fraudulently or dishonestly uses as genuine¹ any document which he knows or has reason to believe to be a forged document,² shall be punished in the same manner as if he had forged such document.

COMMENT.—Under this section the dishonest user of a forged document is made punishable. It punishes a person for making use of a forged document.

Ingredients.—There must be—

1. Fraudulent or dishonest use of a document as genuine.
2. The person using it must have knowledge or reason to believe that the document is a forged one.

1. ‘Uses as genuine.’—The Madras High Court has held that the use of the document must be for one of the purposes mentioned in s. 463. Thus an involuntary production of a document in Court in obedience to an order to produce it is no use of it.⁴ A mere statement that a document is genuine does not amount to using it as genuine.⁵ The Calcutta High Court has dissented from this view. It has held that where a person fraudulently or dishonestly presents a document to another person as being what it purports to be, or causes the same to be so presented, knowing or having reason to believe that it is forged, the document is used as genuine within the meaning of this section. It is immaterial whether it was produced by the accused of his own motion or under the order of a Court if in the

¹ *Ganga Dibya*, (1942) 22 Pat. 95.

² *Bancessur Biswas*, (1872) 18 W. R. (Cr.) 46.

³ *Kuppapa Pillai*, (1885) Weir (3rd Edn.) 336.

⁴ *Assistant Sessions Judge, North Arcot v. Ramammal*, (1911) 36 Mad. 387.

⁵ *Muthiah Chetty*, (1911) 36 Mad. 392.

event he uses it as genuine. If a person summoned to produce a document fails to disclose that he believes it to have been forged, and fraudulently or dishonestly puts it forward as being a genuine document, he is not acting involuntarily, but is deliberately using it for a criminal purpose.¹ The nature of the user is not material.² To constitute use of a document, it is not necessary that the Court should accept the document produced before it or filed in Court. If a person puts forward a document as supporting his claim in any matter, whether that document is acted upon by the Court or used in evidence, is immaterial for the purpose of constituting use of the document by the party within the meaning of this section.³ In a suit for redemption, the accused who was the mortgagee defendant alleged that he was in possession of the property originally as a tenant of the owner and that he had subsequently purchased it by a registered agreement. The agreement was not filed in the trial Court. The suit was decreed. The accused then filed it along with his memorandum of appeal. The appeal was decreed. The agreement was a forged document. It was held that the agreement was used by the accused within the meaning of this section.⁴

The use of a forged document will be fraudulent and dishonest under this section even though the document itself is unnecessary for the case of the party who uses it, and though, in fact, he has a perfectly good title without it.⁵ The presentation of a forged document for registration, and obtaining registration, is using of that document.⁶ The filing of a forged document with a plaint is user of it within the meaning of this section.⁷ Mere reference in the written statement of an accused to a document which is produced and put in evidence by the prosecution cannot be held to be user by the accused within the meaning of the section. If a document is produced and put in evidence by the prosecution, and the pleader of the accused cross-examines the witness upon his evidence, including the evidence which he has given about the written document, such cross-examination cannot be held to be user within the meaning of this section.⁸

If a forged document is produced before a Court having no jurisdiction to entertain the proceedings in which it is produced, an offence under this section is not committed.⁹

2. 'Knows or has reason to believe to be a forged document.'—These words are of general application. The mere fact that a pleader's suspicions ought to have been aroused by the sight of a forged document, is not *prima facie* evidence that he knew, or had reason to believe, the document to be forged. A pleader is under no higher obligation than any other agent would be, and to justify his prosecution it should be shown that he had been a party to the concoction of the document or that he had the knowledge that it was so concocted.¹⁰

¹ *Mohit Kumar Mukerjee*, (1925) 52 Cal. 881.

² *Superintendent and Remembrancer of Legal Affairs, Bengal v. Daulatram Mudi*, (1932) 59 Cal. 1233.

³ *Bansi Sheikh*, (1928) 51 Cal. 469. The head-note of *Ambika Prasad Singh*, (1908) 35 Cal. 820, is declared to be wrong in this case and also in *Rati Jha*, (1911) 39 Cal. 463. See also *Mohit Kumar Mukerjee*, (1925) 52 Cal. 881, where it is adversely commented on.

⁴ *Bansi Sheikh*, *sup.*

⁵ *Daya Ram*, (1885) P. R. No. 16 of 1885; *Dhunum Kazee*, (1882) 9 Cal. 53; *Bansi Sheikh*, *sup.*

⁶ *Azimooddeen*, (1869) 11 W. R. (Cr.) 15.

⁷ *Idu Jolaha*, (1917) 3 P. L. J. 386.

⁸ *Taraknath Baidya*, (1935) 63 Cal. 481.

⁹ *Sumat Prasad*, [1942] All. 42.

¹⁰ *Ranchhoddas Nagardas*, (1896) 22 Bom. 317.

Punishment.—The Madras High Court is of opinion that a person who both forges a document and uses it as genuine can be sentenced for both the offences.¹ The Allahabad High Court has held to the contrary.²

Cases.—**Alteration in or fabrication of receipt.**—The creditors of a Police Constable applied to the District Superintendent of Police that Rs. 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order, directing that the deduction asked for should be made, being passed, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered adding the figure "1" so as to make it appear that the receipt was one for Rs. 18. It was held that the real intent in the debtor's mind being to induce his superior officer to refrain from the illegal act, viz., the act of stopping a portion of his salary without a proper attachment by a civil Court, it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditors' claim and that, therefore, he was not guilty of an offence under this section.³ Where four forged receipts for payment of rent were fabricated in lieu of genuine receipts which had been lost, it was held that the accused did not commit this offence as the false receipts were not made 'dishonestly' or 'fraudulently'.⁴ This decision does not seem to be a sound one.

The accused, in order that he might obtain the annulment of an order adjudicating him an insolvent, and that thereafter he might be in a position to tender for municipal contracts, produced before the receiver in insolvency a document which purported to be a receipt from a creditor for payment of debt which the creditor had in fact written off as irrecoverable. It was held that in respect of the use of that receipt he was guilty under s. 465 read with this section.⁵

Certificate.—Where the accused applied to the Superintendent of Police for employment in the Police force, and in support of his application presented two certificates which he knew to be false, it was held that he was guilty of offences under ss. 463 and 471.⁶ Where the accused used a forged certificate of competency as an engine-room first tindal, he was held guilty under ss. 471 and 463.⁷ With a view to qualify for appearance at the competitive P.C.S. examination the accused presented a certified copy of the certificate granted to him by the University at his Matriculation examination, in which the date of birth had been altered from "5th January 1901" to "15th January 1904." It was held that he was guilty of an offence under this section inasmuch as the document presented, being a false document, was used with intent to cause damage and injury to the other candidates in the competitive examination for P.C.S. and to support his claim to appear.⁸

Plaint.—The accused gave his pleader a copy of a document which had been falsified by an interpolation being made in it for the purpose of its being used in the trial of his suit. It was held that he was guilty, not of an attempt to commit an offence under s. 471, but of the offence itself.⁹

Sumud.—The accused, in order to obtain a recognition from a Settlement Officer that they were entitled to the title of 'loshkur', filed a *sumud* before that officer purporting to grant that title. This document was found not to be genuine. The

¹ *Sriramulu Naidu*, (1928) 52 Mad. 532.

² *Umrao Lal*, (1900) 23 All. 84.

³ *Syed Hussain*, (1885) 7 All. 403.

⁴ *Sheo Dayal*, (1885) 7 All. 459.

⁵ *Abdul Ghafur*, (1920) 43 All. 225.

⁶ *Khandusingh*, (1896) 22 Bom. 768.

⁷ *Abbas Ali*, (1896) 25 Cal. 512, F.B.

⁸ *Chanan Singh*, (1928) 10 Lah. 545.

⁹ *Lala Ojha*, (1899) 26 Cal. 863.

Sessions Judge convicted them under ss. 471 and 484. It was held that, even supposing they had used the document knowing it not to be genuine, they could not be found guilty as their intention was not to cause wrongful gain or wrongful loss to any one, but only to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of 'loskur', and that this could not be said to constitute an intention to defraud.¹ But the Madras High Court has held that deprivation of property is not an essential element of an intention to defraud, and the decisions which proceed on the ground that an act is not fraudulent unless it causes or is intended to cause loss or injury to some one take too narrow a view of the meaning of the word 'fraudulently' as used in the Code.²

Copies.—Where a person took copies of a forged document and put those copies forward as evidence in support of his title, it was held that this was a use by him of the forged document.³ The accused was told to produce copies of revenue records in support of his complaint of trespass and he knowingly produced forged copies as genuine. It was held that this was not an involuntary production of a document in Court and that he was guilty of an offence under this section.⁴

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punishable with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section and the section following are akin to ss. 235, 255 and 250.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished

Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.

¹ *Jan Mahomed*, (1884) 10 Cal. 584.

² *Mulai Singh*, (1906) 28 All. 402.

³ *Kotamraju Venkatrayadu*, (1905) 28 Mad. 90, F.B.

⁴ *Ishar Das*, (1924) 6 Lah. 50.

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine : and if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section resembles ss. 242, 243 and 259.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

COMMENT.—The commencement of the forgery of bank-notes and other similar securities, where it has proceeded to the length which is described in this section, is treated as a substantive offence and punished. This section supplements the provisions of s. 472.

476. Whoever counterfeits upon, or in the substance of, any material, any device or mark, used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

COMMENT.—This section is similar to the preceding section, but as the document, the counterfeit of which is made punishable, is not of so much importance as in that section, the punishment is not so severe.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document¹ which is or purports to be a will, or

Fraudulent cancellation, destruction, etc., of will, authority to or adopt, or valuable security.

an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—This section applies when the document tampered with or destroyed is either a will or an authority to adopt or a valuable security. Owing to the great importance of documents of this kind the punishment provided is severe.

1. 'Document.'—The document must be a genuine one. The offence under this section cannot be committed in respect of a document which is a forgery.¹

477A. Whoever, being a clerk, officer or servant, or employed or ^{Falsification of accounts.} or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

COMMENT.—This section refers to acts relating to book-keeping or written accounts. It makes the falsification of books and accounts punishable even though there is no evidence to prove misappropriation of any specific sum on any particular occasion.

Ingredients.—This section requires that—

1. The person coming within its purview must be a clerk, an officer, or a servant, or acting in the capacity of a clerk, an officer, or a servant.

2. He must wilfully and with intent to defraud—

(i) destroy, alter, mutilate, or falsify, any book, paper, writing, valuable security, or account which

(a) belongs to or is in the possession of his employer; or

(b) has been received by him for or on behalf of his employer;

(ii) make or abet the making of any false entry in, or omit or alter or abet the omission or alteration of any material particular from or in any such book, paper, writing, valuable security or account.

¹ Akbar Hossain, (1938) 43 C. W. N. 222.

Falsification to conceal previous fraud.—The making of false entries in a book or register by any person in order to conceal a previous fraudulent or dishonest act falls within the purview of this section. Certain sums of money were received by the accused for payment into Government Treasury but he did not enter the sums in the register. After the commencement of inquiry into the matter he made false entries in the register showing that those sums had been paid. It was held that he was guilty under this section.¹ All that is necessary to bring a person within the purview of this section is that he should have altered or falsified any book or paper, etc., wilfully and with intent to defraud. If the intention with which a false document is made is to conceal a fraudulent or dishonest act which had been previously committed, the intention cannot be other than an intention to defraud. The concealment of an already committed fraud is a fraud. Making a false document with a view to prevent persons already defrauded from ascertaining that misappropriation had been committed, and thus to enable the person who committed the misappropriations to retain the wrongful gain which he had secured, amounts to the commission of a fraud and brings the case under this section.²

In a Calcutta case it was held that the alteration of accounts so as to show the receipt of a sum of money criminally misappropriated and in order to remove evidence of such misappropriation was not an offence under this section there being no intent to commit fraud. The accused, a Postmaster, despatched to a person four sacks of waste paper forms of the Post Office and appropriated the proceeds of the sale. As an inquiry was set on foot he, with the help of the Treasurer, changed the accounts to cover his failure to credit the proceeds of the sale. The entry newly made in the accounts showed that the Postmaster was liable and indicated the true position of affairs. The Postmaster was convicted under ss. 409, 465, 471 and 477A. It was held that the conviction under ss. 465 and 477A was wrong as there was no intent to defraud in its true legal significance.³

CASES.—The section deals with falsification of accounts. Removal of new court-fee stamps from documents and substitution in their place of used stamps, with alterations of the figures on them, do not fall within the scope of this section.⁴ Falsification of balance-sheet and books of account of a company by a managing director comes under this section.⁵

Where the accused falsified a measurement book of repair to buildings and a bill with intent that a contractor's bill for the repairs done might be passed without actual measurement, it was held that the act of the accused amounted to a fraudulent falsification of account.⁶

Of Trade, Property and other Marks.

478. For the purposes of this Code, the expression "trade mark" includes a trade mark registered under the Trade Marks Act, 1940, and any mark used in relation to

Trade mark.

¹ *Rash Behari Das*, (1908) 35 Cal. 450, dissenting from *Abdul Hamid*, (1886) 13 Cal. 349.

² *Ragho Ram*, (1933) 55 All. 783, *Shuja-ud-din Ahmad*, (1922) 20 A. L. J. R. 662, *Jiwanand*, (1882) 5 All. 221, *Girdhar Lal*, (1886) 8 All. 653, *Lal Gumul*, (1870) 2 N. W. P. 11, and *Jageshwar Pershad*, (1873) 6 N. W. P.

56, dissented from.

³ *Jyotish Chandra Mukerjee*, (1909) 36 Cal. 955.

⁴ *Bibudhananda Chakravarti*, (1919) 47 Cal. 71.

⁵ *Daulat Rai*, (1915) P. R. No. 28 of 1915.

⁶ *Sukhamoy Maitra*, (1937) 16 Pat. 688.

goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right to use the mark.

COMMENT.—This section has been substituted by Act II of 1941.

A mark in order to be a trade-mark must be “distinctive” in the sense of being adapted to distinguish the goods of the proprietor of a trade-mark from those of other persons. A mark which merely describes the quality or origin of an article or is such as is commonly used in the trade to denote goods of a particular kind is not “distinctive”.

479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

COMMENT.—The distinction between ‘trade-mark’ and ‘property mark’ is not recognised in English law.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed¹ that the goods so marked, or any goods contained in any such receptacle so marked, have a connection in the course of trade with a person with whom they have not any such connection, is said to use a false trade mark.

COMMENT.—This section defines the offence of using false trade-mark.

Property in trade-mark is the right to the exclusive use of some mark, name, or symbol, in connection with a particular manufacture, or vendible commodity; consequently, the use of the same mark in connection with a different article is not an infringement of such right of property. If, therefore, the trade-mark contains in itself a clear and distinct description of the commodity to which it is affixed, it is not pirated by the use of a mark which, although in other respects is similar, does not contain or give the same description, and which is impressed upon an article which is not of the nature or quality so described.² There can be no right to the exclusive ownership of any symbols or marks universally in the abstract. Thus, an iron-founder who has a particular mark for his manufactures in iron could not retain the use of the same mark when impressed on cotton or woollen goods; for a trade-mark consists in the exclusive right to the use of some name or symbol as applied to a particular manufacture or vendible commodity.³ A letter or combination of letters may constitute a trade-mark.⁴

A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him.⁵ Where a firm has been using a distinctive mark for their goods for a number of years they acquire property in that mark as indicating that all goods which bear it have been manufactured by that firm.

Ingredients.—This section has two essentials:—

1. Marking any goods, or any case, package, or receptacle, containing goods; or using any case, package or receptacle with any mark thereon.

¹ *Loke Nath Sen v. Ashwini Kumar De*, [1938] 1 Cal. 665.

² *Hall v. Barrows*, (1863) 33 L. J. Ch. 204.

³ *Leather Cloth Co. v. American Leather Cloth Co.*, (1865) 11 H. L. C. 523.

⁴ *Banarsi Das*, (1928) 9 Lah. 401.

⁵ *Latif*, (1916) 39 All. 123.

2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the goods so marked or the goods in the marked receptacle have a connection in the course of trade with a person with whom they have not any such connection.

Infringement.—A person aggrieved by the infringement of his trade mark has two remedies open to him : (1) he can institute criminal proceedings under the Indian Penal Code, or (2) he can bring an action for an injunction and damages; and, although the criminal Court has a discretion in view of the peculiar circumstances of a particular case, e.g., if there exists a *bona fide* dispute as to the right to use a trade mark, or where there has been undue delay in commencing criminal proceedings, to stay its own hands and direct the complainant to establish his rights in a civil Court. It is nowhere laid down by the Legislature that an aggrieved person should seek his remedy in a civil Court and not in a criminal Court.¹

1. 'In a manner reasonably calculated to cause it to be believed.'² The test of the infringement of a trade mark is whether the acts alleged as an infringement are likely to mislead the public into dealing with the alleged infringer under the belief that they are dealing with a person who first used the mark.³ How is this to be tested ? Lord Herschell says : "The eye must be the judge in such a case as this, and . . . the question must be determined by placing the designs side by side, and asking whether they are the same, or whether the one is an obvious imitation of the other."³ The standard of comparison applied should be not that of the expert, but of the public, the unwary purchasers.⁴ The test is not whether a literate purchaser on the alert would be deceived, if he had the two marks side by side, but whether any ordinary unwary purchaser would be deceived by the similarity.⁵ Mere differences in detail do not prevent two designs being essentially the same.⁶ The general resemblance or get-up, irrespective of the circumstance that the registered trade mark is different, does amount to counterfeiting a trade mark.⁷

481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

COMMENT.—This section defines the offence of using a false property mark.

A property mark is intended to denote ownership over all movable property belonging to a person whether it is all of one kind or of different kinds. So long as the person owns movable properties, his property mark impressed upon them

¹ *Banarsi Das*, (1928) 9 Lah. 491; *Muhammad Raza*, (1930) 6 Luck. 183.

² *Hecla Foundry Co. v. Walker Hunter & Co.*, (1889) 14 App. Cas. 550, 555.

³ *Ibid.*

⁴ *Nagendranath Shaha*, (1929) 57 Cal. 1153.

⁵ *Faqir Chand*, (1934) 16 Lah. 114.

⁶ *John Harper & Co. v. Wright and Butler & Co., Ltd.*, [1896] 1 Ch. 142, 147; *Nagendranath Shaha*, sup.

⁷ *Ganpat*, (1914) 16 Bom. L. R. 78; *A. M. Malumiar & Company v. Finlay Fleming & Company*, (1929) 7 Ran. 169.

remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his.¹

The function of a property mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership.

Ingredients.—This section requires two essentials :—

1. Marking any moveable property or goods, or any case, package or receptacle containing goods; or using any case, package or receptacle, with any mark thereon.

2. Such marking or using must be in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or the property or goods, contained in such receptacle, belonged to the person to whom they did not belong.

Trade mark and property mark.—The term 'property mark' is one unknown to English law, and the description of its wrongful use as given in this section would, in most cases, if not in every possible case, be within the scope of English law, viewing the wrong either as a crime or a civil injury. The distinction in the Penal Code between a 'trade mark' and a 'property mark' is, that the former denotes the manufacture or quality of the goods to which it is attached and the latter denotes the ownership of them; or more briefly, the former concerns the goods themselves, the latter, the proprietor of them.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for using a false trade mark or property mark.

COMMENT.—If the marker of an article puts on it the trade-mark of another and he does this with the intention that purchasers may be induced to believe that the article was made by such other maker, he commits this offence. Superiority of the article will be no defence.

An intent to defraud is an ingredient of the offence.²

483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another.

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting a mark used by a public servant.

¹ *Dahyabhai*, (1904) 6 Bom. L. R. 518. *Finlay Fleming & Company*, (1920) 7 Ran. 169.

² *A. M. Malumiar & Company v.*

COMMENT.—The offence under this section is an aggravated form of the offence described in the preceding one. Enhanced punishment is inflicted where the property mark used by a public servant is counterfeited.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—This section resembles ss. 235, 256 and 472. The making or possession of instruments for counterfeiting a trade mark or a property mark is hereby punished.

486. Whoever sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—This section punishes those who sell or have in possession for sale goods marked with a counterfeit trade mark or property mark.

In order to prove that a trade mark is an imitation of another, it is not necessary that there should be a resemblance in every case. It is sufficient if resemblances are of such a nature as to be calculated to mislead an unwary purchaser. The question is really one of fact.¹

This section saves from punishment persons dealing with goods bearing false trade marks (1) if they are able to prove that, after taking reasonable precautions they had no ground to suspect the genuineness of the mark, and (2) they gave all the information in their power as to the source from which the goods were obtained, or (3) that otherwise they had acted innocently in the matter. A general resemblance

¹ *Sri Narayan v. Mahammad Abu Saleh*, [1940] 2 Cal. 1.

constitutes infringement. A person who employs a label which in general resembles the label used by another manufacturer is guilty of counterfeiting the trade mark.¹

The distinction between a 'false' trade mark and a "counterfeit" trade mark is somewhat subtle; it depends on the degree of resemblance between the false and the genuine trade marks. As laid down in Explanation I to s. 28 it is not essential to counterfeiting that the imitation should be exact; but a thing is not ordinarily said to be counterfeit unless it bears on the face of it the semblance of validity and is such as to deceive the average person on ordinary observation with, presumably, some care.²

K, a merchant of Calcutta, ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta. The goods were thereupon sold in the market with the labels of the firm of K attached thereto, and were purchased by M, a dealer in piecegoods. M sold the goods without removing the labels of K and was convicted under this section for selling the goods with a false trade mark. It was held that no offence was committed by M either under s. 482 or s. 486 as the trade-mark was neither false nor counterfeit.³

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—This section is more comprehensive than ss. 482 and 486. The fraudulent making of false marks of any description of goods for the purpose of deceiving public servants, such as custom officers, is punishable under this section.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

COMMENT.—This section punishes the making use of a false mark. The preceding section punished the making of such a mark.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

¹ *Ganpat*, (1914) 16 Bom. L. R. 78; *Hargobind v. Ralli Brothers*, (1902) P. R. No. 35 of 1902.

² *Roshan Singh*, [1940] All. 751.

³ *Matilal Premsook v. Kanhai Lal Dass*, (1905) 32 Cal. 969.

COMMENT.—This section punishes the tampering with a property mark. Criminal intention or knowledge on the part of the accused is necessary.

Of Currency-Notes and Bank-Notes.

489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting currency-notes or bank-notes.

Explanation.—For the purposes of this section and of sections 489B, 489C and 489D, the expression “bank-note” means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

COMMENT.—Sections 489A, 489B, 489C and 489D were introduced in order to provide more adequately for the protection of currency-notes and bank-notes from forgery. Under the Indian Penal Code, which was passed prior to the existence of a paper currency in India, currency-notes were not protected by any special provisions, but merely by the general provisions, applying to the forgery of valuable securities. Before these sections were introduced charges for forging currency-notes had to be preferred under s. 467, for uttering them under s. 471, and for making or possessing counterfeit plates under s. 472. The provisions of s. 467 afforded sufficient means for dealing both with forgery generally and with forgery of currency-notes. But it was at times difficult to obtain a conviction under the other sections.

This section is similar to ss. 231 and 255.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Using as genuine forged or counterfeit currency-notes or bank-notes.

COMMENT.—This section resembles ss. 239, 241 and 258. It provides against trafficking in forged or counterfeit notes.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Possession of forged or counterfeit currency-notes or bank-notes.

COMMENT.—This section resembles ss. 242, 243 and 257. It deals with possession of a forged or counterfeit currency-note or bank-note. The mere possession of a forged note is not an offence. It is not only necessary to prove that the accused was in possession of the forged note; but it should be further established that (1) at the time of his possession he knew the note to be forged or had reason to believe it to be so; and (2) he intended to use it as genuine. The onus lies on the prosecution to prove circumstances which lead clearly, indubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public.¹

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

COMMENT.—This section is analogous to ss. 233, 234, 256, 257 and 485.

489E. (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

Making or using documents resembling currency-notes or bank-notes.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose, to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.

COMMENT.—This section was introduced by Act VI of 1943 because photo prints and other reproductions of currency-notes and bank-notes, though printed for innocent purposes, had passed into circulation in a number of cases and it was considered undesirable that in a country like India with a large mass of illiterate and ignorant persons such reproductions should be permitted to go unchecked before it menaced the safety of the currency.

¹ *Bur Singh*, (1930) 11 Lah. 553.

While the countefeiting of any currency-note or bank-note constituted a criminal offence under s. 489A read with s. 28, there was no legal provision prohibiting the reproduction, or the production of imitations, of currency-notes and bank-notes for such purposes as advertisement and the like where there was no intention to practise deception on any one, nor even a knowledge that deception was likely to be practised with the help of imitations.¹

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

THE authors of the Code observe : "We agree with the great body of jurists in thinking that in general a mere breach of contract ought not to be an offence, but only to be the subject of a civil action.

"To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal legislation."²

490. (*Breach of contract of service during voyage or journey. Repealed by Act III of 1925*).

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to attend on and supply wants of helpless person.

COMMENT.—Object.—The authors of the Code say : "We also think that persons who contract to take care of infants of the sick and of the helpless, lay themselves under an obligation of a very peculiar kind, and may with propriety be punished if they omit to discharge their duty. The misery and distress which their neglect may cause is such as the largest pecuniary payment would not repair; they generally come from the lower ranks of life, and would be unable to pay anything. We, therefore, propose to add to this class of contracts the sanction of the penal law."³

Ingredients.—This section requires :—

1. Binding of a person by a lawful contract.
2. Such contract must be to attend on or to supply the wants of a person who is helpless or incapable of providing for his own safety or of supplying his own wants by reason of
 - (i) youth; or
 - (ii) unsoundness of mind; or

¹ *Statement of Objects and Reasons, Gaz. of India, 1943, Part V, p. 56.*

² *Note P, p. 170.*

³ *Note P, p. 171.*

(iii) disease; or

(iv) bodily weakness.

3. Voluntary omission to perform the contract by the person bound by it.

Under this section it is not the breach of contract towards the other party to the contract that is to be regarded, but the breach of the legal obligation towards the incapable person, which has been accepted and transferred by the contract.

Ordinary servants do not come within this section.—The accused, a cook on a morning whilst the complainant's wife was ill and unable to supply her wants, left his service without warning or permission. It was alleged that the illness of the complainant's wife was aggravated thereby. It was held that the accused was engaged only as an ordinary cook to a family, and was not bound to attend on, or to supply the wants of, any helpless person, and that, therefore, this section did not apply.¹

492. (*Breach of contract to serve at distant place to which servant is conveyed at master's expense. Repealed by Act III of 1925*).

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

COMMENT.—This section punishes a man either married or unmarried who induces a woman to become, as she thinks, his wife, but in reality his concubine. The form of the marriage ceremony depends on the race or religion to which the person entering into the marriage belongs. When races are mixed, as in India, and religion may be changed or dissembled, this offence may be committed by a person falsely causing a woman to believe that he is of the same race or creed as herself and thus inducing her to contract a marriage, in reality unlawful, but which, according to the law under which she lives, is valid.²

The offence under this section may also be punished as rape under s. 375, cl. (4).

Ingredients.—The section contains two ingredients:—

(1) Deceit causing a false belief in the existence of a lawful marriage.¹

(2) Cohabitation or sexual intercourse with the person causing such belief.

494. Whoever, having a husband or wife living, marries¹ in any case in which such marriage is void by reason of its taking place during the life of such husband or wife,² shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marrying again during lifetime of husband or wife.

¹ *Vithu*, (1892) Unrep. Cr. C. 608.

² M. & M. 32.

Exception.³—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years,⁴ and shall not have been heard of by such person as being alive within that time,⁵ provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted⁶ of the real state of facts so far as the same are within his or her knowledge.

COMMENT.—This section punishes the offence known to the English law as bigamy.

Scope.—The section does not apply to Hindu or Mahomedan males, who are allowed to marry more than one wife, but it applies to Hindu or Mahomedan females, and to Christians¹ and Parsis² of either sex.

Ingredients.—This section requires :—

1. Existence of the first wife or husband when the second marriage is celebrated.

2. The second marriage being void by reason of the subsistence of the first according to the law applicable to the person violating the provisions of the section.

1. **'Having a husband or wife living, marries, etc.'**—The validity of a marriage in the case of Hindus, Mahomedans, Jews, Buddhists, Sikhs and Jains, will be determined in accordance with their religious usages; in the case of Native Christians, by Act XV of 1872, in the case of Parsis, by Act III of 1936. The validity of a marriage solemnized under the Special Marriage Act will be determined by its provisions.³

If the first marriage is not a valid marriage, no offence is committed by contracting a second marriage. For instance, if A marries B, a person within prohibited degrees of affinity, and during B's lifetime marries C, A does not commit bigamy.⁴

Divorce dissolves a valid marriage, and the parties obtaining such dissolution can re-marry. Divorce is unknown to Hindu law, though it is practised among the lower classes. It is recognized among Mahomedans, Parsis, and Native Christians.

A Mahomedan woman marrying within the period of her *iddat* (the period of four months which a divorced wife has to observe after divorce before re-marrying) is not guilty of bigamy.⁵

Mahomedan law allows minor repudiation of marriage on attaining puberty.—Under the Mahomedan law, when a child is given in marriage by any person other than the father or grandfather, he or she has the *opinion* of either ratifying it or repudiating it on attaining puberty. Under the Shia law such a marriage is

¹ Act XV of 1892.

² Act III of 1936.

³ Act III of 1872 as amended by Act XXX of 1923.

⁴ *Chadwick*, (1847) 11 Q. B. 173, 205.

⁵ *Abdul Ghani v. Azizul Haq*, (1911) 39 Cal. 409.

of no effect, and produces no legal consequences until it has been ratified by the minor upon his or her attaining majority. The only difference between the Sunni and the Shiah law on the question of option of puberty is that whereas according to the latter school a marriage contracted for a minor by a person other than the father or grandfather is wholly ineffective until it is ratified by the minor on attaining puberty, according to the Sunni school it continues effective until it is cancelled by the minor. Both schools give to the minor an absolute power either to ratify or to cancel the unauthorized marriage. The Sunni law presumes ratification when the girl after attaining the age of puberty has remained silent and has allowed the husband to consummate the marriage.¹ B, a Mahomedan girl, whose father was dead, was alleged to have been given in marriage by her mother to J, some years before she attained puberty. Prior to her attaining puberty, J was sentenced to a term of imprisonment for theft. While he was in jail, B, after she had attained puberty, contracted a marriage with P. The marriage with J was never consummated.² On J being released from jail, he proceeded to prosecute B and P for bigamy and abetment of bigamy, and also charged P with adultery. It was held that B and P had not committed any offence, because, assuming that B was properly married to J by B's mother when B was a child, B had the option of either ratifying or repudiating such marriage on attaining puberty.³

A *nikah* marriage or *sagai* or *pai*³ marriage falls within the purview of this section; but not *jinghara*.⁴

* 2. 'Marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife.'—Where a person already bound by an existing marriage goes through with another person a form of marriage, known to and recognised by the law as capable of producing a valid marriage, such person is guilty of bigamy.

The Bombay High Court has ruled that Courts of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bona fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge of marrying again during the lifetime of the first husband.⁵ A custom of the Talpada Koli caste that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage with another man during the lifetime of her first husband, and without his consent, was held to be invalid as being entirely opposed to the spirit of the Hindu law. Such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable, as regards the woman, under this section.⁶

The Calcutta High Court has, however, upheld a caste custom which allowed a wife to undergo a second marriage after she was relinquished by her husband.⁷ Evidence of any such custom should be allowed by Courts.⁸ In *Uma's* case⁹ the

¹ *Badal Aurat*, (1891) 19 Cal. 79, 82.

² *Ibid.*

³ *Karsan Goja : Bai Rupa*, (1864) 2 B. H. C. (Cr. C.) 117.

⁴ *Gigal v. Phio*, (1888) F. R. No. 25 of 1888.

⁵ *Sambhu Raghu*, (1876) 1 Bom. 347. See *Sankaralingam Chetti v. Subban Chetti*, (1894) 17 Mad. 479, where it is decided that there is nothing

immoral in a caste custom by which divorce and re-marriage are permissible on mutual agreement, on one party paying to the other the expenses of the latter's original marriage.

⁶ *Karsan Goja : Bai Rupa*, (1864) 2 B. H. C. (Cr. C.) 117; *Bai Ganga*, (1916) 19 Bom. L. R. 56.

⁷ *Jukni*, (1892) 19 Cal. 627.

⁸ *Tholasingam*, (1896) 1 Weir 568. (1882) 6 Bom. 126.

Bombay High Court did recognize the custom of a caste which allowed a husband for sufficient reason to divorce his wife. In this case a member of the Ajanya Rajput Gujar caste executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, that in that caste a husband was, for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under this section.

Under the provisions of the Indian Christian Marriage Act (XV of 1872), the first accused, who was a Roman Catholic Indian Christian, married the complainant, who was a Protestant, in a Protestant Church, the ceremony being performed by a Protestant Pastor, and subsequently, after obtaining a release deed from her, he married the second accused in a Roman Catholic Church, the ceremony being performed by a Roman Catholic Priest. It was held that the first accused had committed the offence of bigamy punishable under this section. The release deed executed by the complainant did not operate as a dissolution of the marriage between the first accused and herself. The marriage between the first accused and the complainant was a legal and valid marriage and, as it was subsisting when the first accused married the second accused, the marriage of the first accused with the second accused was void by reason of its taking place during the life of the complainant.¹

Good faith and mistake of law are no defences to a charge of bigamy.²

Conversion from Hinduism.—According to Hindu law an apostate is not absolved from all civil obligations; the matrimonial bond remains indissoluble. A non-Christian marriage is not dissolved by the mere fact of the conversion of one or both of the parties to Christianity.³ Hindu law does not recognize polygamous marriage by a woman. A Hindu woman, who having a Hindu husband living marries a Mahomedan⁴ or a Christian⁵ even after becoming a Mahomedan or a Christian, commits bigamy. A Hindu husband,⁶ under similar circumstances, commits no offence as Hindu law recognizes the right of a husband to contract a valid second marriage notwithstanding the continuance of a former marriage.

Conversion from Mahomedanism.—In the case of an apostate from Mahomedanism the marriage tie is dissolved and the wife will not be guilty of bigamy if she marries again. Ahmediyans are not apostates from Mahomedanism. They differ from other Mahomedans in some matters of religious belief but they are a sect of Mahomedans. Hence, where a Mahomedan becomes an Ahmediyan, he does not become an apostate and his wife is guilty of bigamy if she marries another during his lifetime.⁷

Conversion from Christianity.—The Madras High Court once held that a Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman could not be convicted of bigamy on the ground that he had another wife living

¹ *Gnanasoundari v. Nalla Thambi*, [1946] Mad. 367.

² *Narantakath v. Parakkal*, (1922) 45 Mad. 986; *Abdul Ghani v. Azizul Huq*, (1911) 39 Cal. 409, dissented from.

³ *Ram Kumari*, (1891) 18 Cal. 264; *Mussumat Gholam Fatima*, (1870) P. R. No. 32 of 1870; *Musammatt Ruri*, (1918) P. R. No. 5 of 1919; *Mst.*

Nandi, (1919) 1 Lah. 440.

⁴ *Govt. of Bombay v. Ganga*, (1880) 4 Bom. 330; *Gobardhan Dass v. Jasadmoni Dass*, (1891) 18 Cal. 252. Such a marriage can only be dissolved under the provisions of the Indian Divorce Act (IV of 1869).

⁵ *Millard*, (1887) 10 Mad. 218.

⁶ *Narantakath v. Parakkal*, *supra*.

whom he had married while a professed Christian.¹ It was so held on the ground that the Hindu law allowed polygamy on the part of a husband. But in a subsequent case the High Court has doubted the correctness of this ruling. A native Christian, having a Christian wife living, married a Hindu woman according to Hindu rites without renouncing his religion. The Court held that he was guilty of bigamy and expressed an opinion that it would have made no difference even if he had renounced Christian religion before contracting the second marriage.² Similarly, a Christian cannot by embracing Mahomedanism marry a second time during the lifetime of his first wife.³ A Christian woman, who had married a Christian according to Christian rites and during the lifetime of her husband had become a Mahomedan and married a Mahomedan according to Mahomedan rites, was held to have committed bigamy.⁴ Whether a change of religion made honestly after marriage with the assent of both spouses, without any intent to commit a fraud upon the law, will have the effect of altering the rights incidental to the marriage, such as that of divorce, is a question of importance and of nicety not decided as yet.⁵

3. Exception.—The Exception lays down three conditions:—

1. Continual absence of one of the parties for the space of seven years;
2. The absent spouse not having been heard of by the other party as being alive within that time; and
3. The party marrying must inform the person with whom he or she marries of the above fact.

4. 'Continually absent from such person for the space of seven years'.—If the second marriage take place within seven years under a *bona fide* belief based on reasonable grounds that the former consort is dead, no offence is committed.⁶

5. 'Shall not have been heard of by such person as being alive within that time.'—Where it is proved that the accused and his first wife have lived apart for seven years preceding the second marriage, it is incumbent on the prosecution to shew that during that time he was aware of her existence; and, in the absence of such proof, the accused is entitled to be acquitted.⁷ But a woman who, having the means of acquiring knowledge of the fact of the death of her first husband, does not choose to make use of them, is guilty of bigamy.⁸

6. 'Inform the person with whom such marriage is contracted.'—If the second marriage is contracted within seven years, it is incumbent on the person contracting to inform the other party about the first marriage.⁹

Priest officiating at bigamous marriage.—The priest who officiates at a bigamous marriage is an abettor under ss. 404 and 109.¹⁰

Persons present at bigamous marriage.—Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.¹¹

¹ (1866) 3 M. H. C. (Appx.) vii; *Michael*, (1886) 1 Weir 563.

² *Lazar*, (1907) 30 Mad. 550.

³ *Skinner v. Orde*, (1871) 14 M. I. A. 309, 324.

⁴ *Mussammatt Ruri*, (1918) P. R. No. 5 of 1919.

⁵ *Robert Skinner v. Charlotte Skinner*, (1897) 25 Cal. 537, 546, P.C.

⁶ *Tolson*, (1889) 23 Q. B. D. 168.

⁷ *Curgerwen*, (1865) L. R. 1 C. C. R. 1.

⁸ *Enai Beebee*, (1865) 4 W. R. (Cr.) 25.

⁹ *Ibid.*

¹⁰ *Umi*, (1882) 6 Bom. 126; *Mil-lard*, (1887) 10 Mad. 218.

¹¹ *Umi*, sup.

Abetment.—A man may be guilty of abetment, although the girl herself may be, from want of intelligence or knowledge, incapable of committing this offence.¹ The wife of one of the accused left his house with her minor daughter and married her. The accused hearing of this applied to a Magistrate and the girl was handed over to him. A few months later she was married by him to the other accused. The accused were prosecuted for abetting the offence of bigamy. It was held that although a Hindu father was the proper person to give his daughter in marriage, yet a marriage, which was duly solemnised and otherwise valid, was not rendered void because it was brought about without the consent of the guardian in marriage, and the accused were guilty of abetting bigamy.²

CASES.—**Absence for seven years.**—Where the accused's first wife had left him for sixteen years, and it was proved by the second wife that she had known him for nine years, living as a single man, and that she had never heard of the first wife, who, it appeared, had been living seventeen miles from where the accused resided, it was held that the accused was not guilty of bigamy.³

495. Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

COMMENT.—The offence under this section is an aggravated form of the offence defined in s. 494.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marriage ceremony fraudulently gone through without lawful marriage.

COMMENT.—This section punishes fraudulent mock-marriages.

It applies to cases in which a ceremony is gone through which would in no case constitute a marriage, and in which one of the parties is deceived by the other into the belief that it does constitute a marriage, or in which effect is sought to be given by the proceeding to some collateral fraudulent purpose. Where the ceremony gone through does, but for the previous marriage, constitute a valid marriage, and both parties are aware of the circumstances of the previous marriage, s. 494 applies.⁴

Ingredients.—The section requires two essentials :—

1. Dishonestly or with a fraudulent intention going through the ceremony of marriage.
2. Knowledge on the part of the person going through the ceremony that he is not thereby lawfully married.

Sections 493 and 496.—The two sections are somewhat alike : the difference

¹ *Nand Lal Singh*, (1902) 6 C. W. N. 614.

² *Gajja Nand*, (1921) 2 Lah. 288.

³ *Thomas Jones*, (1842) C & M.

⁴ *Rama Sona*, (1873) Unrep. Cr. C. 77.

appears to be that under s. 493 deception is requisite on the part of the man, and cohabitation or sexual intercourse consequent on such deception. The offence under s. 496 requires no deception, cohabitation, or sexual intercourse as a *sine qua non*, but a dishonest or fraudulent abuse of the marriage ceremony. In the latter case the offence can be committed by a man or woman, in the former, only by a man.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the

Adultery.

wife of another man, without the consent or connivance¹ of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

COMMENT.—The framers of the Code did not make adultery an offence punishable under the Code. But the Second Law Commission, after giving mature consideration to the subject, came to the conclusion that it was not advisable to exclude this offence from the Code. Adultery figures in the penal law of many nations, and some of the most celebrated English lawyers have considered its omission from the English law a defect.

Scope.—The cognizance of this offence is limited to adultery committed with a married woman, and the male offender alone has been made liable to punishment. Thus, under the Code, adultery is an offence committed by a third person against a husband in respect of his wife. It is not committed by a married man who has sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consents to it.

It is not necessary that the adulterer should know whose wife the woman is, provided he knew she was a married woman.¹ A *nekai* wife is a wife within the meaning of this and the following section.²

Ingredients.—The section requires the following essentials :—

1. Sexual intercourse by a man with a woman who is and whom he knows or has reason to believe to be the wife of another man.

2. Such sexual intercourse must be without the consent or connivance of the husband.

3. Such sexual intercourse must not amount to rape.

1. '**Connivance.**'—Connivance is the willing consent to a conjugal offence, or a culpable acquiescence in a course of conduct reasonably likely to lead to the offence being committed.³ Connivance is an act of the mind, it implies knowledge and acquiescence. As a legal doctrine, connivance has its source and its limits in the principle *volenti non fit injuria*, a willing mind, this is all that is necessary.⁴ Connivance is a figurative expression meaning a voluntary blindness to some present act or conduct to something going on before the eyes, or something which is known to be going on without any protest or desire to disturb or interfere with it.⁵

¹ *Madhub Chunder Giri*, (1873) 21 W. R. (Cr.) 13.

² (1865) 4 W. R. (Cr. L.) 1.

³ Stroud's Judicial Dictionary.

⁴ *Boulting v. Boulting*, (1864) 33 L. J. (P. M. & A.) 81.

⁵ *Munir*, (1925) 24 A. L. J. R. 155.

Why wife not punished as abettor.—The authors of the Code observe: "Though we well know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is, unhappily, very different from that of the women of England and France; they are married while still children; they are often neglected for other wives while still young. They share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking, by law, an evil so deeply-rooted in manners of the people of this country as polygamy. We leave it to the slow, but we trust the certain, operation of education and of time. But while it exists, while it continues to produce its never-failing effects on the happiness and respectability of women, we are not inclined to throw into a scale, already too much depressed, the additional weight of the penal law."¹

The reasons given above for not punishing a wife as an abettor seem neither convincing nor satisfactory. It would be more consonant with Indian ideas if the woman also were punished for adultery. Manu has provided punishment for her in such cases.

Complaint by person aggrieved is necessary.—No Court shall take cognizance of the offence except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed. Likewise, if the husband is under eighteen years of age, or is an idiot or lunatic or is from sickness unable to make a complaint, some other person may make a complaint (Criminal Procedure Code, s. 199).

Allegation of adultery between two dates.—A charge of adultery, alleging commission of offences between two dates, is legal where it is impossible, in the circumstances of the case, to assign particular dates on which sexual intercourse took place.²

498. Whoever takes¹ or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man,² with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman,³ shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—Sections 361 and 366 may be compared with this section which may come into operation when the two former sections fail to apply, but only in respect of a married woman.

This and the preceding sections are evidently intended for the protection of husbands, who alone can institute prosecutions for offences under them.

¹ Note Q, p. 175.

488.

² *Bhola Nath Mitter*, (1924) 51 Cal.

Ingredients.—The section requires three things :—

1. Taking or enticing away or concealing or detaining the wife of another man from that man or from any person having the care of her on behalf of that man.
2. Such taking, enticing, concealing or detaining, must be with intent that she may have illicit intercourse with any person.
3. Knowledge or reason to believe that the woman is a wife of another man.

Sections 366 and 498.—For an offence under s. 366 there must be kidnapping or abduction as defined by the Code. While under s. 498 there need be no compulsion or deceit, but the woman must be a married woman. Mere elopement with an adult unmarried woman is no offence. Under s. 366 the intention of the person kidnapping or abducting is to compel the woman afterwards to marry any person against her will, or to force or seduce her afterwards to illicit intercourse. Section 498 applies to cases where the object of the taking, or enticing, is that the woman may have illicit intercourse with some other person, even though, as generally happens, she is quite aware of the purpose for which she is quitting her husband, and is an assenting party to it.

Again, an offence punishable under s. 498 is a minor offence as compared with an offence punishable under s. 366.¹

1. **‘Takes.’**—The taking does not mean taking by force, and means something different from enticing. It is enough that the accused personally and actively assisted the wife to get away from her husband’s house or from the custody of any person who was taking care of her on behalf of the husband, when this is done with the intention stated in this section.² ‘Taking’ implies that there is some influence, physical or moral, brought to bear by the accused to induce the wife to leave her husband. There must be some influence operating on the woman, or co-operating with her inclination at the time the final step is taken which causes a severance of the woman from her husband for the purpose of causing such step to be taken.³ Taking a woman with the consent of the person who has the care of her is not “taking” under the section.⁴

2. **‘From any person having the care of her on behalf of that man.’**—Where the brother of a married woman, who had eloped with the accused, filed a complaint against the accused for an offence under this section, it was held that, as it was not shown that he had the husband’s authority to take care of her, he was not the proper person to file the complaint.⁵

3. **‘Detains with that intent any such woman.’**—The word “detains” means “keeps back.” The keeping back need not necessarily be by physical force ; it may be by persuasion or by allurements and blandishment. The use of the word requires that there should be something in the nature of control or influence which can properly be described as a keeping back of the woman. To constitute detention, proof of some kind of persuasion is necessary. It cannot properly be said that a man detains a woman if she has no desire to leave and on the contrary wishes to stay with him.⁶ The word ‘detains’ implies some act on the part of the accused by which the woman’s movements are restricted and that this again implies

¹ *Jatra Shekh v. Reazat Shekh*, (1892) 20 Cal. 483.

² *Jnanendra Nath Dey v. Kshitish Chandra Dey*, (1935) 39 C. W. N. 1280.

³ *Mahadeo Rama*, (1942) 45 Bom. L. R. 295.

⁴ *Adul Rahman*, (1935) 39 C. W. N. 1055.

⁵ *Ramnarayan Kapur*, (1936) 39 Bom. L. R. 61, [1937] Bom. 244.

⁶ *Prithi Missir v. Harak Nath*, [1937] 1 Cal. 166.

unwillingness on her part.¹ A married woman was taken by her brother from the house of her husband during his absence, and was given away in *natra* marriage to the accused who lived in another village. The woman lived in the accused's house openly and freely as his wife. The accused having been charged with detaining a married woman, it was held that he had not committed that offence.² The word 'detention' is *ejusdem generis* with enticement and concealment. It does not imply that the woman is being kept against her will but there must be evidence to show that the accused did something which had the effect of preventing the woman from returning to her husband.³

The expression "any such woman" in the latter part of this section refers to a woman "who is and whom he (the accused) knows or has reason to believe to be the wife of any other man" mentioned in the first part of the section and not to a woman who had been taken or enticed away from her husband.⁴

Wife cannot be punished as abettor.—In the case of adultery it is distinctly enacted that the wife is not punishable as an abettor. It is therefore inconsistent to punish her as an abettor of the minor offence mentioned in this section.⁵

CHAPTER XXI.

OF DEFAMATION.

499. Whoever by words either spoken or intended to be read, or

Defamation.

by signs or by visible representations, makes or publishes any imputation concerning any person¹ intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or

¹ *Harnam Singh*, [1939] Lah. 148; *Bipad Bhanjan Sarkar*, [1940] 2 Cal. 93.

² *Mahiji Fula*, (1933) 35 Bom. L. R. 1046, 58 Bom. 88; *Ramnarayan Kapur*, (1936) 39 Bom. L. R. 61, [1937] Bom. 244.

³ *Prithi Missir v. Harak Nath*, [1937] 1 Cal. 106.

⁴ *Bipad Bhanjan Sarkar*, [1940] 2 Cal. 93.

⁵ *Phalla v. Jiwan Sing*, (1871) P.R. No. 6 of 1871; *Mohun v. Ghunsham*, (1871) P.R. No. 8 of 1871.

lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

ILLUSTRATIONS.

(a) A says—"Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

ILLUSTRATION.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal,⁶ which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Merits of case decided in Court or conduct of witnesses and others concerned.

ILLUSTRATIONS.

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance⁷ which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Merits of public performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author, which imply such submission to the judgment of the public.

ILLUSTRATIONS.

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish: Z must be a weak man. Z's book is indecent: Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

ILLUSTRATION.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Fifth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

* Accusation preferred in good faith to authorized person.

ILLUSTRATION.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interests.

ILLUSTRATIONS.

(a) A, shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

COMMENT.—The essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.¹

¹ Note B, p. 175.

According to English law the essence of the crime of private libel consists in its tendency to provoke breach of the peace. Under the Penal Code defamation has been made an offence without any reference to its tendency to cause acts of illegal violence. The gist of the offence is the mental suffering caused to the person defamed. Spoken words do not amount to a crime under the English law, but under the Code there is no distinction between a slander and a libel. Before the Indian Penal Code came into force defamation was considered merely as a civil wrong.

Ingredients.—The section requires three essentials :—

1. Making or publishing any imputation concerning any person.
2. Such imputation must have been made by
 - (a) words, either spoken or intended to be read ; or
 - (b) signs ; or
 - (c) visible representations.
3. Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

1. 'Makes or publishes any imputation concerning any person.'—

Every one who composes, dictates, writes or in any way contributes to the making of a libel, is the maker of the libel. If one dictates, and another writes, both are guilty of making it, for he shows his approbation of what he writes. So, if one repeats, another writes a libel, and a third approves what is written they are all makers of it, as all who concur and assent to the doing of an unlawful act are guilty ; and murdering a man's reputation by a libel may be compared to murdering a man's person, in which all who are present and encourage the act are guilty, though the wound was given by one only.¹

'Publishes.'—The defamatory matter must be published, that is, communicated to some person other than the person to whom it is addressed, e.g., dictating a letter to a clerk is publication.² But where there is a duty which forms the ground of privileged occasion the person exercising the privilege may communicate matters to third persons in the ordinary course of business. A solicitor who dictates to his clerk a letter containing defamatory statements regarding a person is not liable for defamation.³

Communicating defamatory matter only to the person defamed is not publication.⁴ The action of a person who sent to a public officer by post, in a closed cover, a notice containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was held to be not such a 'making' or 'publishing' of the matter complained of as to constitute this offence.⁵ A notice under a Municipal Act was issued by the President of the Municipal Committee to a certain person, who sent a reply containing defamatory allegations against the President. This reply was put on the official file by the President and it was read by the members of the Committee. It was held that there was publication of the defamation. The placing of the reply on the official file was not a gratuitous or voluntary act on the part of the President but it was his duty to do so, and the accused knew or must have known that the contents of his reply would be necessarily communicated to the members of the Committee.⁶

¹ Bacon's Abrid., Vol. IV. p. 457.

⁴ *Sadashiv Atmaram*, (1893) 18 Bom.

² *Varnakote Illath*, (1900) 1 Weir 205.

⁵ *Taki Husain*, (1884) 7 All. 205'

³ *Bozsius v. Goblet Freres*, [1894] F. B.

1 Q. B. 842.

⁶ *Sukhdeo*, (1932) 55 All. 253.

According to English law defamatory matter, even if published only to the person defamed, will support an indictment, provided it is likely to provoke a breach of the peace.¹ This view of the English law is met by s. 504 of the Code.

Defamatory matter written on a post-card² or printed on papers distributed broadcast³ constitutes publication. So is the filing in a Court of a petition containing defamatory matter concerning a person with the intention that it should be read by other persons.⁴ When a person presents a defamatory petition to a superior public officer, who, in the ordinary course of official routine, sends it to some subordinate officer for inquiry, there is a publication of the letter at the place where he may receive it, and publication for which the original writer may *prima facie* be held responsible, whether or not he expressly asks for an inquiry.⁵ Communication to a husband or wife of a charge against the wife or husband is a publication,⁶ but uttering of a libel by a husband to his wife is not, as they are one in the eye of the law.⁷

Where a libel is printed, the sale of each copy is a distinct publication and fresh offence; and conviction or acquittal on an indictment for publishing one copy will be no bar to an indictment for publishing another copy.⁸

The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty.⁹

Repetition.—The Code makes no exception in favour of a second or third publication as compared with the first. If a complaint is properly laid in respect of a publication which is *prima facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.¹⁰

Publication of defamatory matter in newspaper.—The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not.¹¹ But it would be a sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge and he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.¹²

The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is publication of such defamatory matter at Allahabad.¹³

Imputation.—It is immaterial whether the imputation is conveyed obliquely, or indirectly, or by way of question, conjecture, or exclamation, or by irony.¹⁴

The words "coward, dishonest man, and something worse than either"¹⁵ and

¹ *Adams*, (1888) 22 Q. B. D. 60.

² *Sankara*, (1863) 6 Mad. 381.

³ *Thiagaraya Krishnasami*, (1892) 15 Mad. 214.

⁴ *Greene v. Delaney*, (1870) 14 W. R. 27; *Abdul Hakim v. Tej Chandar*, (1881) 3 All. 815.

⁵ *Raja Shah*, (1889) P. R. No. 14 of 1889.

⁶ *Wenman v. Ash*, (1853) 13 C. B. 836.

⁷ *Wenhak v. Morgan*, (1888) 20 Q. B. D. 635; *Dr. Jaitishen Das v. Sher Singh*, (1910) P. R. No. 10 of

1910.

⁸ *Pundit Mokand Ram*, (1883) P. R. No. 12 of 1883.

⁹ *Janardhan Damodhar Dikshit*, (1894) 19 Bom. 708.

¹⁰ *Howard*, (1887) 12 Bom. 167.

¹¹ *McLeod*, (1880) 3 All. 342.

¹² *Ramasami v. Lokanada*, (1886) 9 Mad. 387.

¹³ *McLeod*, *sup.*; *Girjashankar Kashiram*, (1890) 15 Bom. 286.

¹⁴ *Archbold*, 30th Edn., p. 1274.

¹⁵ *McCarthy*, (1887) 9 All. 420.

the words to the effect that the complainant and others were preparing to bring a false charge against the accused,¹ are held to be defamatory.

‘Concerning any person.’—The words must contain an imputation concerning some particular person or persons whose identity can be established. That person must not necessarily be a single individual. Where the accused published in a paper an account of an outrage on a woman alleged to have been perpetrated by two constables out of four constables stationed at a police station, it was held that, in the absence of proof that it was intended to charge any particular and identifiable constables with the alleged offence, the accused could not be convicted.²

A newspaper is not a person and therefore it is not an offence to defame a newspaper. Defamation of a newspaper may, in certain cases, involve defamation of those responsible for its publication.³

2. **‘Such imputation should have been made by words either spoken or intended to be read, or by signs or by visible representations.’**—An essential difference between the Indian and the English law is that the former recognizes ‘words spoken’ as a mode of defamation, and the latter does not. By the English law, defamation is a crime only when it is committed by writing, printing, engraving or some similar process. Spoken words reflecting on the private character, however atrocious may be the imputations which those words convey, however numerous may be the assembly before which such words are uttered, furnish ground only for a civil action.⁴ Under the English law, no indictment will lie for words spoken and not reduced into writing unless they are seditious, blasphemous, grossly immoral or obscene, or uttered to a magistrate in the execution of his office, or uttered as a challenge to fight a duel, or with an intention to provoke the other party to send a challenge.⁵ The Penal Code makes no distinction between written and spoken defamation.⁶ In the term ‘defamation’ is used to embrace both libel and slander. The authors of the Code observe: “Herein the English law is scarcely consistent with itself. For, if defamation be punished on account of its tendency to cause breach of the peace, spoken defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree . . .

“The distinction which the English criminal law makes between written and spoken defamation is generally defended on the ground that written defamation is likely to be more widely spread and to be more permanent than spoken defamation. These considerations do not appear to us to be entitled to much weight. In the first place, it is by no means necessarily the fact that written defamation is more extensively circulated than spoken defamation. Written defamation may be contained in a letter intended for a single eye. Spoken defamation may be heard by an assembly of many thousands. It seems to us most unreasonable that it should be penal to say, in a private letter, that a man is dissipated, and not penal to stand up at the town-hall, and there, before the whole society of Calcutta, falsely to accuse him of poisoning his father.

“In the second place, it is not necessarily the fact that the harm caused by defamation is proportioned to the extent to which the defamation is circulated. Some slanders—and those slanders of a most malignant kind—can produce harm only while confined to a very small circle, and would be at once refuted if they

¹ *Shibo Prosad Pandah*, (1878) 4 Cal. 124.

⁴ Note R, p. 176.

⁵ See Archbold, 80th Edn., p. 1272.

² *Government Advocate, B. & O. v. Gopabandhu Das*, (1922) 1 Pat. 414.

⁶ *Parvathi v. Mannar*, (1884) 8 Mad. 175; *Pursoram Doss*, (1765) 2 W. R. (Cr.) 36.

³ *Maung Sein*, (1926) 4 Ran. 462.

were published. A malignant whisper addressed to a single hearer, and meant to go no further, may indicate greater depravity, may cause more intense misery, and may deserve more severe punishment, than a satire which has run through twenty editions. A person, for example, who, in private conversation, should infuse into the mind of a husband suspicions of the fidelity of a virtuous wife might be a defamer of a far worse description than one who should insert the lady's name in a printed lampoon."¹

'By signs or by visible representations.'—The words 'visible representations' will include every possible form of defamation which ingenuity can devise. For instance, a statue, a caricature, an effigy, chalk marks on a wall, signs, or pictures may constitute a libel.²

3. 'Intending to harm, or knowing or having reason to believe that such imputation will harm.'—It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged: it is sufficient to show that the accused intended to harm, or knew, or had reason to believe that the imputation made by him would harm the reputation of the complainant.³ A statement made primarily with the object that the person making it should escape from a difficulty cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings.⁴

'The meaning to be attached to the word 'harm' is not the ordinary sense in which it is used. By 'harm' is meant imputations on a man's character made and expressed to others so as to lower him in their estimation. Anything which lowers him merely in his own estimation does not constitute defamation.'⁵

'Reputation.'—A man's opinion of himself cannot be called his reputation.⁶ A man has no 'reputation' to himself and therefore communication of defamatory matter to the person defamed is no publication.

Explanation 1.—A prosecution may be maintained for defamation of a deceased person, but it has been ruled that no suit for damages will lie in such a case. Where, therefore, a suit was brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, it was held that the suit was not maintainable.⁷

Explanation 2.—An action for libel will lie at the suit of an incorporated trading company in respect of a libel calculated to injure its reputation in the way of its business.⁸ The words complained of must attack the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position.⁹ A corporation has no reputation apart from its property or trade. It cannot maintain an action for a libel merely affecting personal reputation. The words complained of, to support a prosecution, must reflect on the management of its business and must injuriously affect the corporation,

¹ Note R, p. 176.

² *Monson v. Tussauds, Ltd.*, (1894)

1 Q. B. 671, 692.

³ *Gobinda Pershad Pandey v. Garth*, (1900) 28 Cal. 63; *Pimento*, (1920) 22 Bom. L. R. 1224, dissenting from the dicta of Davar, J., in *Anand Rao E. Balkrishna*, (1914) 17 Bom. L. R. 82; *U Aung Pe*, (1938) Ran. 404, F.B.

⁴ *Parcari*, (1919) 41 All. 311.

⁵ *Tuki Husain*, (1884) 7 All. 205, 220, F.B.

⁶ *Ibid.*

⁷ *Luckumsey Rowji v. Hurbun Nursey*, (1881) 5 Bom. 580.

⁸ *South Hetton Coal Co., v. N. E. News Association*, [1894] 1 Q. B. 133.

⁹ *Ibid.*, p. 141.

as distinct from the individuals who compose it. They must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position. A corporation cannot bring a prosecution for words which merely affect its honour or dignity.¹

A prosecution lies for libelling Hindu widows as a class.² Where the defamatory articles, published in a newspaper, related to the habitual immoral conduct of the girls of a particular college, but no particular girl or girls were named in or identifiable from the articles, and the complaint was filed by a number of girls of the college, it was held that the author of the articles was guilty of defamation, inasmuch as the inevitable effect of the articles on the mind of the reader must be to make him believe that it was habitual with the girls of the college to misbehave in the ways mentioned, so that all the girls in the college collectively and each girl individually must suffer in reputation.³

Exceptions.—The defamatory statement does not fall within any of the Exceptions by reason merely of this fact that it is punishable as an offence under s. 186 or any other section of the Code.⁴

Exception 1.—This exception and exception 4 require that the imputation should be true. The remaining exceptions do not require it to be so. They only require that it should be made in good faith.

The truth of the imputation complained of shall amount to a defence if it was for the public benefit that the imputation should be published, but not otherwise. A Court may find that an imputation is true, and made for the public good but on considering the manner of the publication (e.g., in a newspaper) it may hold that the particular publication is not for the public good, and is, therefore, not privileged.⁵ A privilege does not justify publication in excess of the purpose or object which gives rise to it.⁶ If, in addition to statements which would be protected, a person goes further and makes false and uncalled for statements he cannot then be regarded as acting in good faith.⁷

Case.—C was put out of caste by a committee of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of the committee, circulated a letter to the members of their caste stating that C and such woman had been put out of caste and requesting the members of the caste not to receive them into their house or to eat with them and also made defamatory statements about them. It was held that, had such persons contented themselves with announcing the determination of the committee and the grounds upon which such determination was based, they would have been protected, but inasmuch as they went further and made false and uncalled for statements regarding C, they had not acted in good faith.⁸ If a person really was outcasted, a statement to the members of the brotherhood that he was outcasted is the kind of statement contemplated by the expression "public good."⁹

¹ *Maung Chit Tay v. Maung Tun Nyun*, (1935) 13 Ran. 297.

² *Mahim Chandra Roy v. Watson*, (1928) 55 Cal. 1280.

³ *Wahid Ullah Ahrari*, (1935) 57 All. 1012.

⁴ *U Aung Pe*, [1938] Ran. 404, F.B.

⁵ *Janardhan Damodhar Dikshit*, (1894) 19 Bom. 703.

⁶ *Sankara*, (1883) 6 Mad. 381, 395.

⁷ *Ramanand*, (1881) 3 All. 601.

⁸ *Ibid.*

⁹ *Umed Singh*, (1923) 46 All. 64. This case is dissented from by the Nagpur High Court on the point of burden of proof. It is for the accused to establish the plea of justification and not for the complainant to prove that the statement complained of is false: *Sukhdayal v. Saraswati*, [1936] Nag. 217.

Exception 2.—Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care.¹ In order that a comment may be fair (a) it must be based on facts truly stated, (b) it must not impute corrupt or dishonourable motives to the person whose conduct or work is criticised except in so far as such imputations are warranted by the facts, (c) it must be the honest expression of the writer's real opinion made in good faith, and (d) it must be for the public good. The question to be considered in such cases is, would any fair man, however prejudiced he might be, or however exaggerated or obstinate his views, have written the criticism.²

No kind of privilege attaches to the profession of the press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms, or his comments is as wide as, and no wider than, that of any other subject.³

The public acts of a judge may be adversely commented on. Freedom would be seriously impaired if the judicial tribunals were outside the range of such comment.⁴

Exception 3.—The conduct of publicists who take part in politics or other matters concerning the public can be commented on in good faith. M, a medical man and the editor of a medical journal, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was surgeon in charge stating the number of successful operations which had been performed, that it was unprofessional. It was held that inasmuch as such advertisement had the effect of making such hospital a "public question," M was within the third, sixth and ninth Exceptions.⁵

Exception 4.—Where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open Court, then the publication, without malice, of a fair and accurate report of what takes place before that tribunal is privileged.⁶ Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose

¹ *E. I. Howard v. M. Mull*, (1866) *Massani*, *ibid*.

1 B. H. C. (Appx). lxxxv, xci.

⁴ *Ibid*.

² *Khare v. Massani*, [1943] Nag. 347.

⁵ *McLeod*, (1880) 3 All. 342.

⁶ *Kimber v. The Press Association*,

³ *Channing Arnold*, (1914) 41 I. A. (1893) 1 Q. B. 65, 68.

149, 16 Bom. L. R. 544; *Khare v.*

conduct may be the subject of such proceedings.¹ It is immaterial whether the proceedings were *ex parte* or not,² or whether the Court had jurisdiction or not.³ But a report of judicial proceedings cannot be published if the Court has prohibited the publication of any such proceedings,⁴ or where the subject-matter of the trial is obscene⁵ or blasphemous.⁶

Case.—A trustee of a temple was charged with defamation, the alleged defamatory statement being that the complainant, who performed the worship in the temple, had been convicted and sent to jail for the theft of idols belonging to the temple. At the time when the statement was made, an appointment in connection with the temple was in question. It was held that the trustee was justified in making the statement either in the interest of the temple or because the statement was no more than a publication of the result of proceedings in a Court of Justice.⁷

Exception 5.—The administration of justice is a matter of universal interest to the whole public. The judgment of the Court, the verdict of the jury, the conduct of parties and of witnesses, may all be made subjects of free comment. But the criticism should be made in good faith and should be fair. It must not wantonly assail the character of others or impute criminality to them. But in commenting on such matters, a public writer, as much as a private writer, is bound to attend to the truth, and to put forward the truth honestly and in good faith and to the best of his knowledge and ability. It is not to be expected that in discharging his duty of a public journalist he will always be infallible. His judgment may be biased, one way or the other, without the slightest reflection upon his good faith; and, therefore, if his comments are fair, no one has a right to complain.⁸

Exception 6.—The object of this Exception is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. All kinds of performances in public may be truly criticised provided the comments are made in good faith and are fair. Liberty of criticism is allowed, otherwise we should neither have purity of taste nor of morals. Good faith under this Exception requires not logical infallibility but due care and attention.⁹

Exception 7.—This Exception allows a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed, under his authority, so far as regards the matter to which that authority relates.¹⁰ But if this privilege is exceeded in any way the offence will be established. A man may in good faith complain of the conduct of a servant to the master of the servant even though the complaint amounts to defamation, but he is not protected if he publishes the complaint in a newspaper. A spiritual superior, in pronouncing and publishing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertaining to religion or the communication of a sentence he is authorized to pronounce to those who are to guide themselves by it.¹¹

¹ *J. Wright*, (1799) 8 T. R. 293, 298.

26 Mad. 464.

² *Kimber v. The Press Association*, [1893] 1 Q. B. 65.

³ *Woodgate, v. Ridout*, (1865) 4 F. & F. 202, 216.

³ *Usill v. Hales*, (1878) 3 C. P. D. 319.

⁵ *Abdoul Wadood Ahmed*, (1907) 9 Bom. L. R. 230, 21 Bom. 293.

⁴ *Clement*, (1821) 4 B. & Ald. 218.

¹⁰ Note R, p. 183.

⁶ *Hicklin*, (1868) L. R. 8 Q. B. 300.

¹¹ *Sankara*, (1883) 6 Mad. 381, 395, 396.

⁷ *Carlile*, (1819) 3 B. & Ald. 167.

⁷ *Singaraju Nagabhushanam*, (1902)

CASE.—Imputation made by person in authority.—Where the spiritual guide of the caste to which K belonged, issued a letter to K's fellow-villagers to the effect that, as K's wife had been found in the company of a man of a lower caste, no one of her co-religionists should have any social intercourse with her and that she should be ostracised, it was held that the statements contained in the latter had been made in good faith for the protection of the social and spiritual interests of the community.¹

Exception 8.—To obtain the protection given by this Exception (1) the accusation must be made to a person in authority over the party accused, and (2) the accusation must be preferred in good faith. If an officer maliciously makes to his superior a defamatory report against any person he will be guilty.² Complaints made to a Magistrate are not protected if they are not made in good faith.³ A complaint to a police constable is not privileged.⁴

CASES.—A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, comes under this Exception and Exception 10.⁵ The accused in appealing against the levy of assessment by the complainant (a Mamlatdar) by sale of moveable property, alleged that the complainant had acted towards the accused unjustly and spitefully, that in passing the order appealed against he was actuated by personal ill-will and malice towards the accused and had exercised his authority with a view to cause harassment and loss to the accused. It was held that the accused was protected by exceptions 8 and 9 and was not guilty of defamation.⁶

Exception 9.—This Exception protects, under certain circumstances, imputations concerning the character of another. It relates to communication which a person makes, in good faith, for the protection of his own interests or of any other person, or for the public good. It is not sufficient that the person making the imputation believed in good faith that he was acting for the protection of any such interest.⁷ Any one in the transaction of business with another has a right to use language *bona fide* which is relevant to that business, and which a due regard to his own interests make necessary, even if it should directly, or by its consequences, be injurious or painful to another. The rule of public policy on which it is based is that honest transaction of business and of social intercourse will otherwise be deprived of the protection which they should enjoy.⁸ Where a man who was watching a case on behalf of his partner informed the judge, while the hearing was going on, that the complainant was tampering with witnesses and asked that the complainant might be directed to sit in Court, and it appeared that there was no malice or bad faith in making the imputation, it was held that the case fell within this Exception.⁹

This Exception refers to any imputation made in good faith, whereas the first Exception applies only to true imputation made for the public good.

¹ *Basumati Adhikarini v. Budram Koliya*, (1894) 22 Cal 46.

² *Abdur Razak v. Gauri Nath*, (1909) P. W. R. (Cr. C.) No. 4 of 1910.

³ *Abdul Hakim v. Tej Chandar Mukarji*, (1881) 3 All. 815; *Tiruvengada Mudali v. Tripurasundari Ammal*, (1926) 49 Mad. 728, F.B., overruling *Muthusami Naidu*, (1912) 37 Mad. 110.

⁴ *Kakumara Anjaneyalu*, (1916) 17

Cr. L. J. 381.

⁵ *Kashinath Bachaji Bagul*, (1871) 8 B. H. C. (Cr. C.) 168.

⁶ *Anandarao Balkrishna*, (1914) 17 Bom. L. R. 82.

⁷ *Col. Bholanath*, (1928) 51 All. 313.

⁸ *E. M. Slater*, (1890) 15 Bom. 351.

⁹ *Purshotam Kala*, (1885) 9 Bom.

In determining the question of good faith regard should be had to the intellectual capacity of the accused, his predilections and the surrounding facts.¹ The standard of care and caution required, by the expression "good faith" varies with the circumstances of each case.²

It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he had spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith.³

Club committee.—The committee members of a social club, even if wrong, are given protection under this exception, without which it would be impossible for such a body to function. Where the respondent, who was the wife of a member of a social club and was privileged to use the club, preferred a complaint against the members of the committee for defaming her in a letter addressed by them to her husband, it was held that as the committee had acted in good faith, even if they were mistaken they were protected by this exception.⁴

Communication by member of caste.—There is a dividing line between the passing of a resolution at a caste meeting and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publish to all its members a caste resolution in such discharge of duty, the law will hold the occasion of the publication to be privileged. But there must be good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention.⁵ There must not be excessive publication, e.g., publication in a newspaper.⁶ Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of a caste, will not of itself suffice to make the communication privileged.⁷ A person making defamatory expressions for the protection of his son's interests is not privileged, unless the imputation is made in good faith.⁸

Privileges of Judges, etc.—The privileges of parties, counsel, attorney, pleader and witnesses come under this Exception. So also, statements made in pleadings and reports to superior officers are protected by it. (As to civil actions, see the authors' Law of Torts, 14th edition, Chapter XIII).

In India the law regarding defamatory statements, made in the course of judicial proceedings, by Judges, counsel or pleaders, witnesses and parties is lacking in uniformity. The High Court of Madras in earlier cases adopted the English rule of absolute immunity in all cases. The Bombay High Court has not followed the English rule in cases of criminal prosecution on the ground, that English law could not be resorted to where it went beyond the terms of s. 499; but in civil actions it has followed the dictum of the Privy Council in *Baboo Gunnessh Dutt Singh v. Mugneeram Chowdhry*.⁹ The Allahabad High Court has gone a step further

¹ *Muhammad Gul v. Haji Fazley* L. R. 638.
Karim, (1929) 56 Cal. 1013.

² *Yadali v. Gaya Singh*, (1929) 57 Cal. 843.

³ *Nagarji Trikamji*, (1894) 19 Bom. 340.

⁴ *Beckett v. Norris*, [1945] Mad. 749.

⁵ *Virji Bhagwan*, (1909) 11 Bom.

⁶ *Vinayak Atmaram v. Shantaram Janardan*, (1941) 43 Bom. L. R. 737.

⁷ *Coopposami Chetty v. Duraisami Chetty*, (1909) 33 Mad. 67.

⁸ *Abdul Hakim v. Tej Chandar Mukarji*, (1881) 3 All. 815.

⁹ (1872) 11 Beng. L. R. 321, p.c.

and held that cases of defamation under the Code as well as civil suits for damages must be decided in accordance with the provisions embodied in the Indian Penal Code and the Indian Evidence Act. The Calcutta High Court has held that the liability of a person prosecuted for defamation must be determined by the application of the provisions of the Penal Code and not otherwise.¹ The Patna High Court has adopted the view of the Calcutta High Court.²

Judge.—Section 77 protects Judges for acts done when acting judicially, and the illustration to Exception 7 of this section protects a Judge censuring in good faith the conduct of a witness. There is no reported criminal case touching the absolute immunity of a Judge, but the principles laid down in civil actions will equally apply to criminal prosecutions.³

An action for defamation cannot be maintained against a Judge for words used by him whilst trying a cause in Court, even though such words are alleged to be false, malicious, and without reasonable cause.⁴ The ground alleged from the ancient times, as that on which this rule rests, is that if such an action will lie, the Judges would lose their independence, and that the absolute freedom and independence of the Judges is necessary for the administration of justice.⁵ This provision of the law is not for the protection or benefit of a malicious or corrupt Judge, but for the benefit of the public, whose interest it is that the Judges do exercise their functions with independence and without fear of consequences.⁶ The Madras High Court held that English authorities on the subject applied to Judges and Courts in India in the full bench case of *Sullivan v. Norton*.⁷

Counsel, pleader, etc.—No action, according to common law, will lie against an advocate for defamatory words spoken with reference to, and in the course of, an inquiry before a judicial tribunal, although they are uttered by the advocate maliciously and not with the object of supporting the case of his client, and are uttered without any justification or even excuse and from personal ill-will or anger towards the person defamed arising out of a previously existing cause, and are irrelevant to every issue of fact which is contested before the tribunal.⁸ This principle of the common law was applied to advocates in this country by the Madras High Court in *Sullivan v. Norton*.⁹ This case has been doubted in a much later decision of the Madras High Court in which it is held that when a lawyer is acting in the course of his professional duties and is thus compelled to put forward everything that may assist his client, good faith is to be presumed and bad faith is not to be presumed merely because the statement is *prima facie* defamatory, but there must be some independent allegation and proof of private malice from which, in the circumstances of the case, the Court considers itself justified in inferring, that the statement was made, not because it was necessary in the interests of the client, but that the occasion was wantonly seized as an opportunity to vent private malice. Even the presence of malice will not override the presumption of good faith, when the statement made was obviously necessary in the interests of the client, and where the lawyer could not omit to make it without gravely imperilling the interests of

¹ *Satish Chandra Chakravarti v. B. 668.*

Ram Doyal De, (1920) 48 Cal. 388, s.b.

² *Karu Singh*, (1926) 7 P. T. L. 587.

³ *Pursoram Doss*, (1865) 3 W. R. (Cr.) 45.

⁴ *Raman Nayar v. Subramanya Ayyan*, (1893) 17 Mad. 87.

⁵ *Anderson v. Gorrie*, [1895] 1 Q.

⁶ *Raman Nayar v. Subramanya*.

sup.

⁷ (1886) 10 Mad. 28, f.b.

⁸ *Munster v. Lamb*, (1853) 11 Q. B. D. 588.

⁹ (1886) 10 Mad. 28, f.b.

his client, and would, in fact, not be discharging his duty to his client unless he made it.¹

The Bombay High Court has laid down² that s. 499 should be construed without reference to the English law. Where express malice is absent, a Court, having due regard to public policy, should be extremely cautious before it deprives the advocate of the protection of Exception 9. Where a pleader in addressing a Mamlatdar, on behalf of the accused, commented on some of the witnesses for the prosecution and called them 'loafers,' and was prosecuted for defamation, it was held that in the absence of express malice (which was not to be presumed) the pleader was protected by this Exception and that in considering whether there was good faith the position of the person making the imputation must be taken into consideration.³ In a subsequent full bench case it held that in this country an advocate enjoys the same measure of license as he enjoys in England; that he cannot be punished for acting on the instructions given him when he did not and could not know that they were false; and that he has the fullest liberty of speech so long as his language is justified by his instructions, or by the evidence, or by the proceedings on the record. The mere fact that his words are defamatory, or that they are calculated to hurt the feelings of another or that they ultimately turn out to be absolutely devoid of all solid foundation, will not make him responsible nor render him liable in any civil or criminal proceedings.⁴ But in a later case, after expressing a doubt whether an advocate or pleader has the unqualified privileges accorded to him in England, it held that when a pleader was charged with defamation in respect of words spoken or written while performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable unless there was satisfactory evidence of actual malice and unfair advantage taken of his position as a pleader. In this case a pleader representing a complainant wrote to the trying Magistrate to inquire when the latter would take up the case for trial and in the letter described the accused as a 'notorious wrong-doer.' On a prosecution for defamation, it was held that the pleader was guilty as the libel was not uttered by him in the discharge of his duty as a pleader.⁵ An advocate who makes defamatory statements in the conduct of a case has no wider protection than a layman. He is not entitled to absolute privilege. But the Court ought to presume that the acted in good faith and upon instructions and ought to require the other party to prove express malice.⁶

The Calcutta High Court has held that advocates in India, including in the term vakils and pleaders, have no absolute privilege on a prosecution for defamation. It is not defamation to make an imputation on the character of a witness in good faith, and for the protection of the client. The presumption, therefore, is that a question asked in cross-examination, making such an imputation, affords no ground, ordinarily, for a criminal prosecution. It is the duty of the Court, when a complaint is filed against an advocate, ordinarily to presume that the remarks or questions objected to were made on instructions and in good faith. There may be circumstances showing that the remark was made, or the question put, wantonly, or from malice or private motive, but the greatest care should be taken to inquire into the circumstances, and an opportunity should be given to the advocate to offer

¹ *Mir Anwarudin v. Fathim Bai* Bom. L. R. 3, F.B. Abrid., (1926) 50 Mad. 667.

² *Nagarji Trikamji*, (1894) 19 Bom.

340.

³ *Bhaishankar v. Wadia*, (1899) 2 Bom. L. R. 910.

⁴ *Purshottamdas*, (1907) 9 Bom. L. R. 1287.

⁵ *Tulsidas v. Billimoria*, (1932) 34

an explanation before summons is issued. At the same time, while advocates have their privileges, they have also responsibilities, and they ought not to abuse their privileges. An advocate should exercise his own discretion before putting an offensive question.¹ A pleader must use a certain amount of common sense and caution in putting defamatory questions. There may be cases, where, under proper instructions, he may ask such questions to impeach the credit of the witness, unless he knows of the latter's good character and reputation. But where the questions were put with utter recklessness, and without regard to seeing whether there was any truth in them and with absolute disregard of whether he was entitled to ask them or not, and they were not put for the good of the suit but to injure the reputation of the witness publicly, they were held to have been asked in absolutely bad faith.²

The Patna High Court has held that the liability of an advocate charged with defamation in respect of words spoken or written in the performance of his professional duty depends on the provisions of this section; the Court will presume good faith unless there is cogent proof to the contrary. The privilege is not absolute but qualified, but the burden is cast upon the prosecution to prove absence of good faith. The common law of England, under which an advocate can claim absolute privilege for words uttered in the course of his professional duty, is not applicable to India. An advocate in this country is not entitled to claim absolute privilege, and, in cases of prosecution for defamation, his liability must be determined on reference to the provisions of this section.³

The Rangoon High Court has held that the English law of absolute privilege does not apply to statements of advocates in judicial proceedings.⁴

Witness.—The Bombay High Court has in a full bench case laid down that relevant statements made by a witness on oath or solemn affirmation in a judicial proceedings are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of s. 499.⁵

According to the Calcutta High Court a witness, who, being actuated by malicious motives, makes a voluntary and irrelevant statement, not elicited by any question put to him while under examination, to injure the reputation of another, commits an offence under this section.⁶ If the statement is relevant to the inquiry no prosecution would lie.⁷

The Madras High Court is of opinion that statements of witnesses made in the witness-box are absolutely privileged. If they are false the remedy is by indictment for perjury and not for defamation.⁸ A statement made in answer to a question put by a police-officer under the Criminal Procedure Code, s. 161, in the course of

¹ *M. Banerjee v. Anukul Chandra Mitra*, (1927) 55 Cal. 85; *Nikunja Behari Sen v. Harendra Chandra Sinha*, (1913) 41 Cal. 514.

² *Fakir Prasad v. Kripasindhu*, (1926) 54 Cal. 137.

³ *Nirsu Narayan Singh*, (1926) 6 Pat. 224.

⁴ *McDonnell*, (1925) 3 Ran. 524.

⁵ *Bai Shanta v. Umrao Amir Malik*, (1925) 50 Bom. 162, 28 Bom. L. R. 1,

F.B., overruling *Babaji*, (1892) 17 Bom. 127, and *Balkrishna Vithal*, (1893) 17 Bom. 573.

⁶ *Haidar Ali v. Abru Mia*, (1905) 32 Cal. 756.

⁷ *Woolfun Bibi v. Jesarat Sheikh*, (1899) 27 Cal. 262.

⁸ *Manjaya v. Sesha Shetti*, (1888) 11 Mad. 477; *Alraja Naidu*, (1906) 30 Mad. 222.

investigation made by him, is privileged and cannot be made the foundation of a charge of defamation.¹

The Allahabad High Court has in a full bench case² held that a witness can be prosecuted for defamatory statements concerning a person unless he shows that the statements fall under one of the Exceptions to this section.³

The former Chief Court of the Punjab was of the opinion that this Exception modified the principle of English law. There was nothing in this section which protected witnesses as a class in respect of statements made by them in that character. The true test of immunity in the case of witnesses, as of other persons, is whether the Exception is established in its entirety.⁴

The Courts in Burma, prior to the establishment of the Rangoon High Court, had adopted the view of the Calcutta and the Allahabad High Courts.⁵

The Nagpur High Court has followed the Bombay, the Calcutta and the Allahabad High Courts and held that a person giving evidence in a Court of law is not entitled to an absolute privilege in respect of statements which he makes and is consequently not immune from a complaint of defamation by reason of words uttered on oath in the witness box.⁶

Parties.—The Madras High Court has held that if the accused himself asks any question, while defending himself, the question could not be made the subject of a civil action, nor would any criminal proceedings lie for defamation.⁷ But where a person, who was being defended by counsel on a criminal charge, interfered in the examination of a witness and made a defamatory statement with regard to his character, he was held guilty of defamation.⁸

In a full bench case the same High Court laid down that the statement of a person charged with an offence in answer to a question by the Court is absolutely privileged.⁹ Subsequently, this case has been considered in another full bench case and the High Court has dissented from the view expressed in it, observing: "The privilege defined by the Exceptions to s. 499 of the Indian Penal Code must be regarded as exhaustive as to the cases which they purport to cover and that recourse cannot be had to the English common law to add new grounds of exception to those contained in the statute."¹⁰ It was also held that if a defamatory statement is made before an officer who is neither a judicial officer nor a Court, e.g., a Registration Officer, such a statement is not absolutely privileged.¹¹

The Calcutta High Court,¹² the Allahabad High Court¹³ and the former Chief Court of the Punjab¹⁴ have held that a suitor is not absolutely privileged under this Exception.

The Bombay High Court has held that the protection which may be given, upon principles of public policy, to a witness cannot be given to a complainant who,

¹ *Govinda Pillai*, (1892) 16 Mad. 235.

² *Ganga Prasad*, (1907) 29 All. 685, F. B.; *Isuri Prasad Singh v. Umrao Singh*, (1900) 22 All. 234.

³ *Maya Das*, (1893) P. R. No. 14 of 1893.

⁴ *Meer Burks v. Mg. Hla Pe*, (1918) 3 U. B. R. 101.

⁵ *Chotelal v. Phulchand*, [1937] Nag. 425.

⁶ *Hayes v. Christian*, (1892) 15 Mad. 414.

⁷ *Ibid.*

⁸ *Venkata Reddy*, (1912) 36 Mad. 216, F. B.

⁹ *Tiruvengada Mudali v. Tripurasundari Ammal*, (1926) 40 Mad. 728, F. B.

¹⁰ *Krishnamal v. Krishnaiyengar*, (1912) 23 M. L. J. 50, F. B.

¹¹ *Satish Chandra Chakravarti v. Ram Doyal De*, (1920) 48 Cal. 388, S. B.

¹² *Gajadhar*, (1890) 10 A. W. N. 170.

¹³ *Fateh Muhammad*, (1889) P. R. No. 34 of 1889.

when asked by the Magistrate to state his grievance, deliberately makes a defamatory statement without any justification.¹ But if a statement is made by the accused in good faith for the protection of his own interest no charge for defamation could lie.² In a full bench case it has laid down that relevant statements made by an accused under s. 342, Criminal Procedure Code, or contained in a written statement filed by him, are not absolutely protected but are governed by s. 499.³

The Rangoon High Court has held that a party who gives evidence on his own behalf in a judicial proceeding may be prosecuted for any defamatory statement made in the course of his evidence. He may, however, plead this Exception in defence.⁴

Pleadings.—Authority is strongly against the absolute immunity from prosecution for defamatory statements contained in applications, pleadings and affidavits. The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged but are governed by the provisions of this section.⁵

The Allahabad High Court is of opinion that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding, but good faith, as required in this Exception, should be proved.⁶ Where in an application for the transfer of a criminal case the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one U, in order to prejudice them in their defence in a civil suit which U had caused to be brought against them, it was held that this statement did not amount to defamation as it fell within the ninth Exception.⁷ The Allahabad High Court held in a case in which the accused was prosecuted for making a defamatory imputation in a written statement that there is a distinction between criminal and civil liability for defamation. Civil liability is to be determined by the principles of English law but criminal liability is governed by the provisions of the Penal Code and by those provisions alone.⁸

The Calcutta High Court has held that defamatory matter appearing in a plaint is not privileged. It convicted the accused in a case for describing the complainant in his plaint by a wantonly offensive designation.⁹ It has also held that a person is liable under this section for making a defamatory statement in an affidavit if the statement is wholly irrelevant to the inquiry to which the affidavit relates.¹⁰

There is a conflict in the decisions of the Calcutta High Court on the question whether statements made by a complainant in a petition presented to a Magistrate are absolutely privileged.¹¹

¹ *Dinshaji v. Jehangir*, (1922) 24 Bom. L. R. 400.

² *Esufalli Abdul Hussain*, (1918) 20 Bom. L. R. 601.

³ *Bai Shanta v. Umrao Amir*, (1925) 50 Bom. 162, 28 Bom. L. R. 1, F.B.

⁴ *Sayed Ally*, (1925) 27 Cr. L. J. 648.

⁵ *Bai Shanta v. Umrao Amir*, (1925) 50 Bom. 162, 28 Bom. L. R. 1, F. B.

⁶ *Abdul Hakim v. Tej Chandar Mukarji*, (1881) 3 All. 815; *Isuri Prasad Singh v. Umrao Singh*, (1900) 22 All. 234.

⁷ *Isuri Prasad Singh v. Umrao*

Singh, *sup.*

⁸ *Chenja Devi v. Pirbhu Lal*, (1925) 24 A. L. J. R. 329.

⁹ *Kali Nath Gupta v. Gobinda Chandra Basu*, (1900) 5 C. W. N. 293; *Angada Ram v. Nema Chand*, (1896) 23 Cal. 687.

¹⁰ *Giribala Dassi v. Pran Krishto Ghosh*, (1903) 8 C. W. N. 292.

¹¹ *Golap Jan v. Bholanath Khettry*, (1911) 38 Cal. 880; *Kari Singh*, (1912) 40 Cal. 441, F. B. *contra*, *Kari Singh*, (1912) 40 Cal. 433.

The Madras High Court has held in a full bench case that a defamatory statement in a complaint to a Magistrate is not absolutely privileged.¹

The Patna High Court has held, following the Calcutta view, that a defamatory statement, whether on oath or otherwise, falls within s. 499 and is not absolutely privileged. Where in a plaint the accused described the complainant (defendant No. 3) as the "kept woman" of defendant No. 1 without any foundation it was held that he was guilty of defamation.²

The former Chief Court of the Punjab had laid down that a person who had made defamatory statements in petitions was guilty of defamation.³

The Rangoon High Court has held that where criminal proceedings are taken for defamatory statements alleged to be made by parties to a judicial proceedings in affidavits filed by him, the accused cannot claim the protection of the English rule of absolute privilege; and that if the statements are in fact defamatory, the accused can protect himself only under one of the Exceptions.⁴

According to English law no action lies for any statement in the pleadings.

Reports.—The report of an officer in the execution of his duty, under his superior's orders, which contains defamatory imputations against others, but which does not appear to have been made recklessly or unjustifiably is covered by this Exception. But a totally false report will not be protected.⁵

Exception 10.—This Exception protects a person giving caution in good faith to another for the good of that other, or of some person in whom that other is interested or for public good.

Case.—The complainant, a Brahman, who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved of by the accused, who formed a faction of the caste; and they, after an interval of six months, distributed in the bazar to all classes of the public printed papers in which the complainant was described as a sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice. It was held that the accused had not acted in good faith, and that the publication was not, under the circumstances, privileged and protected by this Exception.⁶

Complaint by aggrieved person necessary.—No Court shall take cognizance of this offence except upon a complaint made by the person aggrieved.

A complaint for defamation by the person aggrieved by it can be entertained by a Court notwithstanding that the accused could have been prosecuted on the same facts under s. 182 on the complaint of a public servant. The two offences are fundamentally distinct in nature, although they may arise out of one and the same statement of the accused. The defamatory statement does not fall within any of the Exceptions to s. 499 by reason merely of the fact that it is punishable as an offence under s. 182, or any other section of the Code; nor is this section included in the list of sections contained in s. 195 (1) (b) of the Criminal Procedure Code.⁷

¹ *Tiruvengada Mudali v. Tripurasundari Ammal*, (1926) 49 Mad. 728, F.B., overruling *Venkata Reddy*, (1912) 36 Mad. 216, F.B.

² *Karu Singh*, (1926) 7 P. L. T. 587, following *Kari Singh*, (1912) 40 Cal. 438.

³ *Kirpa Ram*, (1887) P. R. No. 21

of 1887.

⁴ *Mull Chand v. Buga Singh*, (1980) 8 Ran. 359.

⁵ *Rajnarin Sein*, (1870) 6 Beng. L.R. (Appx.) 42, 14 W. R. (Cr.) 22.

⁶ *Thiagaraya v. Krishnasami*, (1892) 15 Mad. 214.

⁷ *U. Aung Pe*, [1938] Ran. 404, F.B.

President of Municipality.—The President of a Municipality is not a 'person aggrieved,' within the meaning of s. 198 of the Criminal Procedure Code, by the defamation of his subordinate officers.¹

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

COMMENT.—The offence under this section is a distinct offence from the one under s. 500. The person printing or engraving defamatory matter abets the offence. This section makes such abetment a distinct offence.

Ingredients.—This section requires two things :—

1. Printing or engraving any matter.
2. Knowledge or reason to believe that such matter is defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

COMMENT.—This section supplements the provisions of the previous section by making the seller of defamatory matter punishable under it.

Ingredients.—This section requires two essentials :—

1. Selling or offering for sale any printed or engraved substance.
2. Knowledge that such substance contains defamatory matter.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

503. Whoever threatens another with any injury¹ to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

ILLUSTRATION.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

COMMENT.—The offence of criminal intimidation seems to require both a person to be threatened and another in whom he is specially interested. Then

¹ *Beachamp v. Moore*, (1902) 26 Mad. 48.

there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt to commit the offence, since otherwise the attempt would be to do something not constituting the offence.¹

Ingredients.—This section has the following essentials :—

1. Threatening a person with any injury
 - (i) to his person, reputation or property ; or
 - (ii) to the person, or reputation of any one in whom that person is interested.
2. The threat must be with intent
 - (i) to cause alarm to that person, or
 - (ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, or
 - (iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

1. 'Threatens another with any injury.'—The gist of the offence is the effect which the threat is intended to have upon the mind of the person threatened, and it is clear that before it can have any effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The threat referred to in this section must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing his mind.² The threat must be one which can be put into execution by the person threatening. It is not necessary that the injury should be one to be inflicted by the offender ; it is sufficient if he can cause it to be inflicted by another ; and the infliction of it could be avoided by some act or omission that the person threatening desires. Punishment by God is not one which a person could cause to be inflicted or the execution of which he could avoid.³

A threat, in order to be indictable, must be made with intent⁴ to cause alarm to the complainant. Mere vague allegation by the accused that he is going to take revenge by false complaints cannot amount to criminal intimidation.⁴

'Injury.'—Where the accused held out a threat of getting a Head Constable of Police dismissed from service, it was held that this did amount to a threat of injury as was punishable under this section.⁵

Criminal intimidation and Extortion.—Criminal intimidation is analogous to Extortion. In Extortion the immediate purpose is obtaining money or money's worth ; in Criminal intimidation, the immediate purpose is to induce the person threatened to do, or abstain from doing, something which he was not legally bound to do or omit.

CASES.—**Threat of vengeance.**—A constable was sent to fetch to a Police Inspector some persons from whom the latter wished to make inquiries regarding an offence. While the constable was taking two persons with him, the accused came up and threatened them both and the constable with the Head Constable's vengeance, and as a consequence the two persons refused to accompany the constable who had to go without them. It was held that the accused was guilty of this offence.⁶

¹ *Mangesh Jivaji*, (1887) 11 Bom. 376, 379, 380.

² *Gunga Chunder Sen v. Gour Chunder Banikya*, (1888) 15 Cal. 671, 673.

³ *Doraswamy Ayyar*, (1924) 48 Mad.

774.

⁴ *Govind*, (1900) 2 Bom. L. R. 53.

⁵ *Dada Hanmant*, (1895) 20 Bom.

794.

⁶ *Purshotam Vanamali*, (1896)

Unrep. Cr. C. 850.

Threat to ruin another by false cases.—Where the accused who threatened to ruin the complainant by cases was convicted of criminal intimidation, it was held that the conviction could not stand, because had the threat been to ruin the complainant by false cases, the offence would have been committed; but as the threat was to ruin him by cases, it could not be assumed that by cases was meant false cases.¹

Threat of picketing.—The accused gave a notice to a shopkeeper requiring him to execute an agreement not to import for one year any foreign cloth for sale at his shop and intimidating that on his failure to do so his shop would be picketed. At that time picketing was not an offence. It was held that the accused were guilty of criminal intimidation. Prohibition from importing for one year articles in which the shop dealt would, in the ordinary course of business, cause injury to the property of the shopkeeper, and the threat came within the definition of criminal intimidation.²

Person informed about threatened injury to another must be interested in him.—The accused sent a fabricated petition to the Revenue Commissioner, S. D., containing a threat that if a certain Forest Officer were not removed elsewhere, he would be killed. It was found that the Commissioner had neither official nor personal interest in the Forest Officer. It was held that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to criminal intimidation.³ A threat to commit suicide is not within the section unless the other person be interested in the person making the threat.⁴

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

COMMENT—This section provides a remedy for using abusive and insulting language. Abusive language which may lead to a breach of the public peace is not an offence. There must be an intentional insult. Insult may be offered by words or conduct. If it is by words, the words must amount to something more than mere vulgar abuse.

The law makes punishable the insulting provocation which, under ordinary circumstances, would cause a breach of the peace to be committed, and the offender is not protected from the consequence of his act because the person insulted does not accept the provocation in the manner intended,⁵ or exercise self-control, or being terrified by the insult, or overpowered by the personality of the offender, does not actually break the peace or commit another offence.⁶ Where, therefore, A abused B to such an extent as to reduce B to a state of abject terror, it was held

¹ *Jacuhir Pattak v. Parbhoo Ahir*, (1886) P. R. No. 109 of 1886, (1902) 30 Cal. 418.

² *Raghubar Dayal*, (1930) 53 All. 407.

³ *Mangesh Jiraji*, (1887) 11 Bom. 376.

⁴ *Nubi Buksh v. Must. Oomra*,

(1886) P. R. No. 109 of 1886. ⁵ *Jogayya*, (1887) 10 Mad. 353, 354; *Vaz v. Dias*, (1929) 32 Bom. L. R. 103.

⁶ *Kanshi Ram v. Fazal Mohamad*, (1932) 14 Lah. 92.

that A, having given to B such provocation as would under ordinary circumstances have caused a breach of the peace, was guilty of this offence.¹

Ingredients.—This section requires two essentials;—

1. Intentionally insulting a person and thereby giving provocation to him.
2. The person insulting must intend or know it to be likely that such provocation will cause him to break the public peace or to commit any other offence.

Sections 499 and 504.—The difference between an offence under this section and defamation lies in the fact that in defamation, publication to the prosecutor alone is not sufficient, as such an imputation could not be said to harm the reputation of the person; but under this section this would complete the offence. This section corresponds precisely with those cases in which, under the English law, defamatory matter published to the prosecutor alone would be indictable as libellous.

505. Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of Her Majesty or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

COMMENT.—This section is aimed at reports calculated to produce mutiny or to induce one section of the population to commit offences against another.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation or with imprisonment for a term which may extend

If threat be to cause death or grievous hurt, etc.

¹ *Jogayya*, (1887) 10 Mad. 358, 354.

to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Criminal intimidation by an anonymous communication.

COMMENT.—For a conviction under this section it must be shown that the accused committed criminal intimidation by an anonymous communication. A person who extorts money by sending anonymous letters as if from God, conveying threats of Divine punishment if a specified sum of money be not paid to a certain person identifiable by the description given in the letters, cannot be convicted under this section as it does not lie in his power either to inflict the threatened punishment or cause it to be inflicted.¹

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do,

Act caused by inducing person to believe that he will be rendered an object of Divine displeasure.

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

ILLUSTRATIONS.

(a) A sits *dhurna* at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render an object of Divine displeasure. A has committed the offence defined in this section.

COMMENT.—This section is intended to prevent such practices as *dhurna* and *traga*.

Dhurna.—Sitting at the door of a house to compel payment of a debt due by a debtor, or of arrears owing by a public officer or prince. The person so sitting observes a strict fast, and as long as he so sits the person from whom he demands payment is obliged to fast also, and abstain from his usual occupations and amuse-

¹ *Doraswamy Ayyar*, (1924) 48 Mad. 774.

ments; as, if the suitor were to perish, the consequences of the sin would fall upon him. It was first made a punishable offence by Bengal Regulation VII of 1820.¹

Traga.—The shedding of blood, either his own² or of a connexion, by a bhat (bard, herald, or chronicler of ancient days) in order to enforce the fulfilment of an engagement for which he has pledged his personal security. It was made punishable by Bombay Regulation XIV of 1827.³

Divine displeasure.—A person who is excommunicated does not become an object of Divine displeasure by the act of the priest who pronounces the sentence.⁴ The accused wrote to the widow of a person whose work he had done to pay the balance of the money due to him, otherwise it would be recovered from her husband in the next world. It was held that a mere threat that if a debt was not paid, then, by operation of divine laws displeasure would fall upon the debtor was not sufficient to bring the case within the meaning of this section because the section contemplated that the person intended to be harmed would be made the object of Divine displeasure by some act of the offender.⁴

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Word, gesture or act intended to insult the modesty of a woman.

COMMENT.—This section makes intention to insult the modesty of a woman the essential ingredient of the offence.⁵ If a man intending to outrage the modesty of a woman exposes his person indecently to her or uses obscene words intending that she would hear them or exhibits to her obscene drawings, he commits this offence.

Ingredients.—This section requires :—

1. Intention to insult the modesty of a woman.
2. The insult must be caused
 - (i) by uttering any word or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or
 - (ii) by intruding upon the privacy of such woman.

Indecent overtures.—The accused, a University graduate, wrote a letter containing indecent overtures and posted it in an envelope addressed to an English nurse with whom he was not acquainted. It was held that the accused intended to insult the modesty of the nurse; and that the letter, though enclosed in an envelope, was an object which was exhibited to the nurse to whose address it was posted.⁶

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a

Misconduct in public by a drunken person.

¹ Wilson's Glossary of Judicial and Revenue Terms. 140.

² *Ibid.*

³ *DeCruz*, (1884) 8 Mad. 140.

⁴ *Tanumal Udhasing*, [1944] Kar.

⁵ *Phiaz Mahamad*, (1908) 5 Bom. L. R. 502.

⁶ *Tarak Das Gupta*, (1925) 28 Bom. L. R. 99, 50 Bom. 246.

manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

COMMENT.—*Ingredients.*—The section requires two things :—

1. Appearance of a person in a state of intoxication in

(i) any public place, or

(ii) any place which it is a trespass in him to enter.

2. The person so appearing must have conducted himself in such a manner as to cause annoyance to any person.

The immunity from punishment which the Code, through motives of humanity and justice, allows to persons mentally affected, is not extended to him who commits an offence through drunkenness; he shall not be excused because his incapacity arose from his own default, but is answerable equally as if he had been, when the act was done, in the full possession of his faculties, a principle of law which is embodied in the familiar adage *qui peccat ebrius, luat sobrius*.¹

Mere intoxication is not made punishable. It is only when a person appears in a state of intoxication in a public place, as in a street, or goes to a place where he has no right to go, and causes annoyance to the people, that he commits this offence.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

511. Whoever attempts to commit an offence punishable by this Code¹ with transportation or imprisonment,² or to cause such an offence to be committed,³ and in such attempt does any act towards the commission of the offence,⁴ shall, where no express provision is made by this Code⁵ for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence or with both.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

ILLUSTRATIONS.

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

COMMENT.—*Scope.*—The Allahabad High Court has held that this section does not apply to attempts to commit murder which are fully and exclusively provided for by s. 307.⁶ The Bombay High Court has, however, held to the contrary.⁷

¹ (1580) Cary's Rep. 133.

² *Francis Cassidy*, (1867) 4 B. H.

³ *Niddha*, (1891) 14 All. 38; *Tulsha*, (Cr. C.) 17.

(1897) 20 All. 143.

The former Chief Court of the Punjab was of opinion that this section was in terms much wider than s. 307. Under s. 307 the act done must be one capable of causing death, and it must also be the last proximate act necessary to constitute the completed offence; under s. 511 the act may be *any* act in the course of the attempt towards commission of the offence.¹

Essentials.—In every crime, there is, *first*, intention to commit it; *secondly*, preparation to commit it; *thirdly*, attempt to commit it. If the third stage, that is attempt, is successful, then the crime is complete. If the attempt fails the crime is not complete but the law punishes the person attempting the act. An 'attempt' is made punishable, because every attempt, although it fails of success, must create alarm, which, of itself, is an injury, and the moral guilt of the offender is the same as if he had succeeded.

An attempt to commit a crime must be distinguished from an *intention* to commit it, and from *preparation* made for its commission.²

(1) **Intention.**—Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice.³ But the law does not take notice of an intention without an act.⁴ Mere intention to commit an offence, not followed by any act, cannot constitute an offence.⁵ The will is not to be taken for the deed, unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it.

(2) **Preparation.**—Preparation consists in devising or arranging the means or measures necessary for the commission of an offence.⁶ The provisions of the section do not extend to make punishable as attempts acts done in the mere stage of preparation.⁷

The law allows a *locus penitentie* and will not hold that a person has attempted a crime until he has passed beyond the stage of preparation.⁸ A minor girl under the age of sixteen years was taken by accused No. 1 under the direction of accused No. 2 from Sholapur to Tuljapur (in the Nizam's territory) and there dedicated to Goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. It was held that the intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their accompanying the girl to Tuljapur did not by itself constitute an abetment. Ranade, J., said: "In the present case beyond the mere intention and direct preparation, there was no distinct offence by way of instigating the act committed out of British India. Mere intention not followed by any act cannot constitute an offence, and indirect preparation, which does not amount to an act which amounts to a commencement of the offence, does not constitute either a principal offence, or an attempt or abetment of the same".⁹

Preparation to commit an offence is punishable only when the preparation is to commit offences under s. 122 (waging war against the King-Emperor), s. 126

¹ *Jiwan Das*, (1904) P. R. No. 80 of 1904.

² *Peterson*, (1876) 1 All. 316, 317.

³ Stephen's General View of the Criminal law of England, p. 69 (2nd edn.).

⁴ *Dugdale*, (1853) 1 E. & B. 435.

⁵ *Baku*, (1899) 1 Bom. L. R. 678, 24 Bom. 287.

⁶ Quoted with approval from May-

ne's Criminal Law in *Peterson's* case, (1876) 1 All. 316, 317, and in *Padala Venkatasami*, (1881) 3 Mad. 4, 5.

⁷ *Ramsarun Chowbey*, (1872) 4 N. W. P. 46, 48; *Paira Ram*, (1902) P. R. No. 25 of 1902.

⁸ *Padala Venkatasami*, sup.

⁹ *Baku*, (1899) 1 Bom. L. R. 678, 681, 24 Bom. 287, 291.

(preparation to commit depredation on the territories of any power at peace with the King-Emperor), and s. 399 (preparation to commit dacoity).

CASES.—Causing banns of bigamous marriage to be published.—Where a man, having a wife living, caused the banns of marriage between himself and a woman to be published, it was held that he could not be punished for an attempt to commit bigamy, because the act of causing the publication of the banns of marriage was an act done in the preparation to marry, but did not amount to an attempt to marry. The accused might, before any ceremony of marriage was commenced, have will not to carry out his criminal intention of marrying her.¹

Purchase of stamped paper in another's name.—In a case the Allahabad High Court held that mere purchasing of a stamped paper in the name of the person whose name it was intended to forge did not constitute an attempt to commit forgery.² But in subsequent cases, the same Court held otherwise distinguishing this case.³ M instigated Z to personate C and to purchase in C's name certain stamped paper, in consequence of which, the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. It was held that the offence of fabricating false evidence was actually committed, and that M was guilty of abetting the commission of such offence.⁴ The former case was distinguished on the ground that the endorsement of the stamp-vendor formed no part of the document which it was the intention of the purchaser to forge and that the offence of forgery had not proceeded beyond the stage of preparation; but in the latter case there was actual fabrication though no judicial proceedings had been instituted. In another case, C, calling himself K, went to a stamp-vendor, accompanied by a man named Kalyan, and purchased from him in the name of K a stamped paper. The two men then went to a petition-writer and, again giving his name as K, they asked the petition-writer to write for them a bond for Rs. 50 payable by K to Kalyan. It was held that Kalyan was guilty of attempt to commit the offence under s. 467, and C of abetment of the said attempt.⁵ Here, too, *Ramsarun's* case was distinguished on the ground that nothing was written on the stamped paper. In a Madras case the High Court arrived at the same conclusion as that in *Ramsarun's* case. The accused there conspired with other persons to prepare a document purporting to be a valuable security which he now would be a false document and be used for the purpose of fraud, and for that end prepared a draft which he was about to copy on an old stamped paper produced for the purpose, and applied to a person to supply the Telugu date corresponding to the English date which the document was to contain. It was held that the accused had not passed beyond the stage of preparation, and was not guilty of an attempt to forge, but only of abetment.⁶

Printing of receipt forms for fraudulent purpose.—Where a person gave orders for the printing of certain receipt forms similar to those used by the Bengal Coal Company and corrected the proofs of the same, it being his intention to use the receipt forms in order to commit a fraud, it was held that he could not be convicted of an attempt to commit forgery until he had done some act towards making one of the forms a false document, and that, until a form had been converted into a

¹ *Peterson*, (1876) 1 All. 316, 317.

² *Ramsarun Chowbey*, (1872) 4 N. W. P. 46, 48.

³ *Mula*, (1879) 2 All. 105.

⁴ *Kalyan Singh*, (1894) 16 All. 409.

⁵ *Padala Venkatasami*, (1881) 3 Mad.

⁶

document, all that was done consisted in mere preparation for the commission of an offence.¹

Going with stale milk where cows were milked.—A contractor for the supply of milk to a regimental hospital was found in the hospital compound with about three gallons of stale milk in his possession going in the direction of the place where the cows were about to be milked, his milk being in a can similar to those in which the cows were milked. It was held that his act did not amount to more than preparation.²

Acts preparatory to commit murder.—The accused asked a native doctor to supply her with medicine for the purpose of poisoning her son-in-law. It was held that the offence committed was not an attempt to murder, as it was a mere act by way of preparation to commit an offence and was not a transaction which would have necessarily ended in murder if not interrupted, but that such act might be held to be an instigating of the native doctor to abet the accused in the commission of murder, and with reference to s. 108, Expln. 4, might have been punished under ss. 116 and 302.³ The accused, on quarrelling with the complainant, fetched a sword, but was seized and disarmed by others before he could use it. He, however, asserted, while under restraint, his intention of killing the complainant if he were let go. It was held that fetching a sword was not an attempt under this section. "It is quite possible that although the prisoner fetched the sword, he might not after all have actually used it against the complainant, who was his own brother."⁴

House-breaking.—A person, who went at night on the roof of another's house with a stick and an instrument for house-breaking, was held guilty of house-trespass under s. 447 and not of an attempt to commit house-breaking by night, because mere presence on the roof of a house amounted to preparation and nothing more.⁵

Running towards well for committing suicide.—A woman ran to a well stating she would jump into it, and she was caught before she could reach it. It was held that she could not be convicted of an attempt to commit suicide as she might have changed her mind before jumping into the well.⁶

(3) **Attempt.**—Attempt is the direct movement towards the commission after the preparations are made.⁷

An 'attempt' is an intentional preparatory action which fails in object—which so fails through circumstances independent of the person who seeks its accomplishment.⁸ When a man does an intentional act with a view to attain a certain end and fails in his object through some circumstances, independent of his own will, than that man has attempted to effect the object at which he aimed.⁹

The Calcutta High Court laid down in two cases¹⁰ that a person could not be convicted of an attempt to commit an offence under this section unless the offence would have been committed if the attempt charged had succeeded. It has subsequently laid down that intention followed by preparation followed by any "act

¹ *Riasat Ali*, (1881) 7 Cal. 352.

² *Sukha*, (1885) P. R. No. 40 of 1885.

³ *Musst. Bakhtawar*, (1882) P. R. No. 24 of 1882.

⁴ *Data Ram*, (1882) P. R. No. 45 of 1882; see also *Shera*, (1868) P. R. No. 18 of 1868.

⁵ *Walidad*, (1907) P. R. No. 15 of 1907.

⁶ *Ramakka*, (1884) 8 Mad. 5.

⁷ Quoted with approval from Mayne's Criminal Law in *Peterson*, (1876) 1 All. 316, and in *Padala Venkatasami*, (1881) 3 Mad. 4.

⁸ Per Jenkins, C. J., in *Luxman*, (1899) 2 Bom. L. R. 286.

⁹ Per Jenkins, C. J., in *Vinayek*, (1899) 2 Bom. L. R. 304.

¹⁰ *Riasat Ali*, sup.; *Chandí Pershad v. Abdur Rahman*, (1894) 22 Cal. 181, 188.

done towards the commission of the offence" is sufficient to constitute an attempt. "Act done towards the commission of the offence" are the vital words in this connection. If an accused intending to administer something capable of causing a miscarriage, administers a harmless substance, it cannot amount to an "act towards the commission of the offence" of causing miscarriage. He is, therefore, not guilty of an attempt to cause miscarriage. It is different, however, when his failure is not due to any act or omission of his own, but to the intervention of some factor independent of his own volition.¹

In *Ramsarun's case*,² Turner, J., says : "To constitute . . . the offence of attempt under this section, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence."

An attempt can only be manifested by acts which would end in the consummation of the offence, but for intervention of circumstances independent of the will of the party.³

1. 'Offence punishable by this Code.'—No criminal liability can be incurred under the Code by an attempt to do an act, which, if done, will not be an offence against the Code.⁴

Impossible offence.—As attempt is possible, even when the offence attempted cannot be committed; as when a person, intending to pick another person's pocket, thrusts his hand into the pocket, but finds it empty. That such an act would amount to a criminal attempt, appears from the illustrations to s. 511. But in doing such an act, the offender's intention is to commit a complete offence, and his act only falls short of the offence by reason of an accidental circumstance which has prevented the completion of the offence. It is possible to attempt to commit an impossible theft and so offend against the Code because theft is itself an offence against the Code, and may, therefore, be attempted within the meaning of the Code.⁵

2. 'With transportation or imprisonment.'—Offences punishable with death only, or fine only, are not contemplated by this section.

3. 'To cause an offence to be committed.'—This will include an attempt to abet an offence. So it has been held that it is not legally impossible to attempt the abetment of an offence—the abetment of an offence being itself an offence.⁶

4. 'Does any act towards the commission of the offence.'—These words must not, it seems, be construed to include all acts, however remote, which tend towards the commission of the offence. The thing done may be too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt.⁷ Many acts, coupled with the intent, will not be sufficient. For instance, if a man intends to commit a murder, and is seen to walk towards the place of the contemplated scene, that will not be enough.⁸ The act must be one immediately and directly tending to the execution of the principal crime, and committed by the accused under such circumstances that he has the power of carrying his intention into execution. Thus it is a sufficient overt act to render a person liable to be found guilty of attempting to set fire to a stack, if he go to

¹ *Asgarali Pradhania*, (1938) 61 Cal. 420.

Cal. 54.

⁵ *Mangesh Jivaji*, sup.

² (1872) 4 N. W. P. 43, 47.

³ *Peterson*, (1876) 1 All. 316.

⁶ *R. Spier*, (1887) P. R. No. 49 of 1887.

⁴ *Mangesh Jivaji*, (1887) 11 Bom. 376, 381; *Ram Charit Ram Bhakat v. Chairman, Rajshahi District Board*,

⁷ See illustration to s. 307.

⁸ *Robert's Case*, (1855) Dears. Cr. C. 539, 550.

the stack with the intention of setting fire to it, and light a lucifer match for that purpose, but abandons the attempt because he finds that he is being watched.¹

In each of the two illustrations given, under this section there is not merely an act done with the intention to commit an offence, which act is unsuccessful because it could not possibly result in the completion of the offence, but an act is done 'towards the commission of the offence,' that is to say, the offence remains incomplete only because something yet remains to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. Thus in ill. (a) the act of breaking open the box is done towards the commission of the theft of the jewels. The theft itself, that is, the actual removal of the jewels, still remains to be done, and it remains undone only because it turns out that there are no jewels to remove. In ill. (b) Z fails to comply with the essentials of theft simply because there is nothing in the pocket.

Where the accused pointed at the prosecutor a revolver loaded in some of its chambers with ball cartridges, but not in others, saying that he would shoot him, and he pulled the trigger of the revolver, but the hammer fell upon a chamber which contained an empty cartridge case, it was held that the accused could be convicted of attempting to discharge a loaded fire-arm with intent to murder.²

In *MacCrea's case*³ Knox, J., observes: "I do not hold, and have no hesitation in saying, that s. 511 was never meant to cover only the penultimate act towards completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, are done with the intent to commit it and done towards its commission."

The Bombay High Court, agreeing with the opinion of Knox, J., has held that this section does not relate only to the penultimate act, but to all preceding acts if they were done with the intention to commit or facilitate the commission of the act.⁴

It is not necessary that the accused should complete every stage in the actual offence except the final stage. It is enough if in the attempt he did any act towards the commission of the offence.⁵

Cases.—Attempt to obtain bribe.—When B, who was employed as a clerk in the Pension Department, in an interview with A, who was an applicant for a pension, after referring to his own influence in that department, and instancing two cases in which, by that influence, increased pensions had been obtained, proceeded to intimate that anything might be effected by having his palm greased, and on the overture being rejected, concluded by declaring that A would rue and repent the rejection of it, it was held that the offence of attempting to obtain a bribe was consummated.⁶

A person who offers to pay gratification to a public servant is punishable under ss. 116, 161, and this section.⁷

Attempt to fabricate false evidence.—Where the accused dug a hole intending to place salt in it, in order that the discovery of the salt might be used in evidence against the prosecutor in a judicial proceeding, it was held that he was guilty of an attempt to fabricate false evidence, because by digging the pit he did an act towards the commission of the offence.⁸

¹ *William Taylor*, (1859) 1 F. & F. 511.

² *Jackson*, (1890) 17 Cox 104.

³ (1898) 15 All. 173, 179.

⁴ *Anant*, (1900) 2 Bom. L. R. 653, 25 Bom. 90.

⁵ *Raghunath*, (1940) 16 Luck. 194.

⁶ *Buldeo Sahai*, (1879) 2 All. 258.

⁷ *Ahad Shah*, (1917) P. R. No. 18 of 1918.

⁸ *Nunda*, (1872) 4 N. W. P. 183.

Attempt to cause hurt.—Where the accused ran after the complainant with an axe in his hand, but when he was only four paces from the complainant the axe was snatched away from his hand, it was held that he was guilty under s. 326 combined with this section.¹

Attempt to steal.—The accused was entrusted by his master with some meat which was to be weighed out and delivered to a customer. By means of a false weight he kept back a part of the meat with intent to steal it; but the fraud was discovered before he had actually moved away with it. It was held that he was guilty of an attempt to steal the meat.² The accused were seen to hurry on to the platform of a station just as a train was about to start; they did not go by that train, and separated on reaching the platform. On the arrival of the succeeding train, they crowded round and hustled a woman who was entering a compartment, and one of them was seen endeavouring to find the pocket of her dress. It was held that they were guilty of attempt to steal.³ Accused made his way into an open thorned enclosure in which goats and sheep were kept. He was disturbed and fled. It was held that he was guilty of attempt to commit theft.⁴

Attempt to cheat.—Where the accused posed that he could double currency notes and a police-officer knowing that he could not do so but with a view to get him convicted gave him some notes and caught him while, after going through a mock process of doubling notes, he tried to substitute some pages of a book in their place, it was held that the accused went far beyond the stage of preparation and was guilty of attempting to cheat.⁵ M wrote a letter to the Currency Office at Calcutta, enclosing the halves of two Government currency notes, stating that the other halves were lost, and inquiring what steps should be taken for the recovery of the value of the notes. The Currency Office having, upon inquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M, and returned by him to the Currency Office. It was held that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of attempting to cheat.⁶ The accused manufactured certain spurious trinkets. He took them to a goldsmith and shewed them to him saying that they were of gold and that they were stolen property (which they were not). He said that he did not wish to sell them in the bazaar and asked the goldsmith to buy them. The goldsmith did not buy and the negotiations went no further. It was held that the accused was guilty of attempt to cheat.⁷ The accused insured his paddy in certain godowns with three Fire Insurance Companies and, on the godowns being burnt down, he first sent the Insurance Companies notices informing them of the fire and subsequently presented his claims in which he deliberately made false statements as to the quantity of paddy stored in the godowns and destroyed by the fire. It was held that the sending of the notices was an act of preparation but when the accused followed up these notices with the

¹ *Jivan Das*, (1904) P. R. No. 30 of 1904.

² *Cheeseman*, (1862) 9 Cox 100.

³ *Ring*, (1892) 17 Cox 491.

⁴ *Ghusala*, (1918) P. R. No. 13 of 1919; *Kohari*, (1914) P. R. No. 24 of 1914.

⁵ *Raghunath*, (1940) 16 Luck. 194.

⁶ *The Government of Bengal v.*

Umash Chunder Mitter, (1888) 16 Cal. 310; *Shib Charan*, (1928) 10 Lah. 253.

⁷ *Abdullah*, (1914) P. R. No. 14 of 1914.

actual claim papers, he committed himself to a representation of fact which being false to his knowledge must be regarded as an overt act towards the commission of the offence of cheating—an act which had gone beyond the stage of preparation.¹ The accused sent blank papers in a cover² insured for Rs. 900 and addressed to himself, and, on delivery of the cover, stated that the cover had contained currency note to the value of Rs. 900 and made claim for the same. It was held that he was guilty of attempting to cheat.³

5. 'Where no express provision is made by this Code.'—The section does not apply to cases of attempts made punishable by some specific sections of the Code. The attempts specially provided for are :—

Section 121, attempt to wage war against the King. Section 124, attempt wrongfully to restrain the Governor-General and other high officials with intent to induce or compel them to exercise or refrain from exercising any of their lawful powers. Section 125, attempt to wage war against the Government of any Asiatic Power in alliance or at peace with the King. Section 130, attempt to rescue State prisoners or prisoners of war. Section 161, attempt by a public servant to obtain an illegal gratification. Section 162, attempt to obtain a gratification in order by corrupt or illegal means to influence a public servant. Section 163, attempt to obtain a gratification for exercising personal influence over a public servant. Section 196, corrupt attempt to use as true evidence known to be false. Sections 198 and 200, corrupt attempt to use as true a certificate or declaration known to be false in a material point. Section 213, attempt to obtain a gratification to screen an offender from punishment. Sections 239 and 240, attempt to induce a person to receive a counterfeit coin. Section 241, attempt to induce a person to receive as genuine counterfeit coin which, when the offender took it, he did not know to be counterfeit. Sections 307 and 308, attempts to commit murder and culpable homicide. Section 309, attempt to commit suicide. Sections 385, 387 and 389, attempt to put a person in fear of injury or accusation in order to commit extortion. Section 391, conjoint attempt of five or more persons to commit dacoity. Sections 393, 394 and 398, attempts to commit robbery. Section 460, attempt by one of many joint house-breakers by night to cause death or grievous hurt.

¹ *Maung Po Hmyin*, (1923) 2 Ran. ² *Suchit Raut*, (1929) 9 Pat. 126.
53.

SUMMARY

THE draft of the Indian Penal Code was prepared by the First Indian Law Commission when Macaulay was the President of that body. Its basis is the law of England freed from superfluities, technicalities, and local peculiarities. Suggestions were also derived from the French Penal Code, and from Livingstone's Code of Louisiana. The draft underwent a very careful revision at the hands of Sir Barnes Peacock, Chief Justice, and puisne Judges of the Calcutta High Court who were members of the Legislative Council, and was passed into law in 1860. Though it is principally the work of a man who had hardly held a brief, and whose time was devoted to politics and literature, yet it is universally acknowledged to be a monument of codification and an everlasting monument to the memory of its distinguished author.

The legitimate objects of penal legislation are the selection of those violations of right which are sufficiently dangerous to the good order of society to justify and require the infliction of punishment to repress them, and the adaptation of the degree of punishment to the purpose of repressing such violations.

Object of penal legislation. A *crime* is an act of commission or omission, contrary to municipal law, tending to the prejudice of the community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State. It tends directly to the prejudice of the community, while a civil injury tends more directly and immediately to the prejudice of a private right. The true test between a crime and a civil injury is that the latter is compensated by damages while the former is punished. The State is supposed to be injured by any wrong to the community and is therefore the proper prosecutor. Many crimes include a tort or civil injury; but every tort does not amount to a crime, nor does every crime include a tort. Conspiracy, conversion, private nuisance, wrongful distress, etc., are merely torts. Assault, false imprisonment, false charge, defamation, etc., are all crimes as well as torts. Forgery, perjury, bigamy, homicide, etc., are crimes but not torts.

The great difference between the legal and the popular meaning of the word *crime* is, that whereas the only perfectly definite meaning which a lawyer can attach to the word is that of an actor omission punishable by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind. By a criminal, people in general understand a person who is liable to be punished, because he has done something at once wicked and obviously injurious in a high degree to the commonest interests of society. Criminal law is, however, confined within very narrow limits and can be applied only to definite

overt acts or omissions capable of being distinctly proved, which acts or omissions inflict definite evils, either on specific persons or on the community at large.¹

By criminal law is now understood the law as to the definition, trial and punishment of crimes, i.e., of acts or omissions forbidden by law which affect injuriously public rights, or constitute a breach of duties due to the whole community. Criminal law includes the rules as to the prevention, investigation, prosecution and punishment of crimes. It lays down what constitutes an offence, what proof is necessary to prove it, what procedure should be followed in a Court, and what punishment should be imposed.

In criminal law the general principle is that there must be some guilty condition of mind in every offence. This is designated by the expression *mens rea* (see p. 55). It is however in the power of the Legislature to enact that a man may be convicted of an offence although there was no guilty mind. Where a statute requires a motive to be proved as an essential element of a crime, the burden is on the prosecution to prove it. The absence of *mens rea* really consists in an honest and reasonable belief entertained by the accused of the existence of facts, which, if true, would make the act charged against him innocent.

The authors of the Code observe —“We cannot admit that a Penal Code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act is innocent. Many things which are not punishable are morally worse than many things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in a passion, or breaks a window in a frolic; yet we have punishment for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice; yet we punish the latter for theft, and we do not punish the former for hard-heartedness.”²

Criminal law forms generally a part of the public law not variable in any one of its parts by the volition of private individuals and it is not necessarily deprived of its effect merely by the possible culpability of the individuals who may be the sufferers by the breach. The maxim *ex turpi causa non oritur actio* is not a sufficient excuse for a man who acts in opposition to the provisions of a penal statute. If a man, for instance, gives a spurious sovereign to a person for losing a bet, and the latter sues the former, he cannot succeed for a breach of contract.

In criminal cases the presumption of law is that the accused is innocent.

Presumption of innocence.

The burden of proving every fact essential to bring the charge home to the accused lies on the prosecution. The evidence must be such as to exclude, to a

¹ Stephen's History of Criminal Law of England, Vol. I.

² Note Q, p. 174.

moral certainty, every reasonable doubt of the guilt of the accused. The evidence of guilt must not be a mere balance of probabilities, but must satisfy the Court* beyond reasonable doubt that the accused is guilty. In matters of doubt it is safer to acquit than to condemn, since it is better that several guilty persons should escape than one innocent person should suffer. Unbiased moral conviction is no sufficient foundation for a verdict of guilty, unless it is based on substantial facts leading to no other reasonable conclusion than that of guilt of the accused. No man can be convicted of an offence where the theory of his guilt is no more likely than the theory of his innocence.

Under s. 105 of the Indian Evidence Act it is incumbent on the accused to prove the existence (if any) of circumstances which bring the offence charged within any exception or proviso contained in the Penal Code, and the Court shall presume the absence of such circumstances, but if it is apparent from the evidence on the record, whether produced by the prosecution or defence, that a general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the exception.

* There is no limitation to prosecute a person for an offence. *Nullum*
Limitation. *tempus occurrit regi* (lapse of time does not bar the right of the Crown). And as a criminal trial is regarded as an action by the King, it may be brought at any time. It would be odious and fatal, says Bentham, to allow wickedness, after a certain time, to triumph over innocence. No treaty should be made with malefactors of that character. Let the avenging sword remain always hanging over their heads. The sight of a criminal in a peaceful enjoyment of the fruit of his crimes, protected by the laws he has violated is a consolation to evil-doers, an object of grief to men of virtue, a public insult to justice and to morals. The Roman law, however, laid down a prescription of twenty years for criminal offences as a rule. There is no period of limitation for offences which fall within the four corners of the Penal Code.

The master is liable for the tortious acts of his servants done in the course of his employment and for the master's benefit, but in criminal law he who does the act is liable except where a person who is not the doer abets or authorizes the act. There are, however, certain exceptions to this principle.

1. Statutory liability. A statute may impose criminal liability upon the master as regards the acts or omissions of his servants. Licence cases form a class by themselves in which the master is generally held responsible.

2. Public nuisance. The owner of works carried on for his profit by his agents is liable to be indicted for a public nuisance caused by acts of his agents in carrying on the works.

3. Neglect of duty. If a person neglects the performance of an act which is likely to cause danger to others, and entrusts it to unskilful hands he will in certain cases be criminally liable.

The following tabular statement gives an outline of the scheme of the Scheme. Indian Penal Code—

General Provisions.

1. Territorial operation of the Code (c. I).
2. General Explanations (c. II).
3. Punishments (c. III).
4. General Exceptions (c. IV).
5. Abetment (c. V).
6. Conspiracy (c. VA).
7. Attempts (c. XXIII).

Specific Offences.

- | | |
|---|--|
| 1. Affecting the State | .. { State (c. VI).
{ Army, Navy and Air Force (c. VII).
{ Public tranquillity (c. VIII).
{ Public servants { conduct of (c. IX).
{ contempt of au-
{ thority of (c. X).
{ Public justice (c. XI).
{ Public health, safety, decency, and
{ morals (c. XIV).
{ Elections (c. IXA).
{ Coin and Government Stamps (c. XII).
{ Weights and Measures (c. XIII).
{ Religion (c. XV).
{ Contract of Service (c. XIX).
{ Marriage (c. XX). |
| 2. Affecting the common weal | .. { |
| 8. Affecting the human body | .. { Homicide, murder, abetment of suicide,
causing miscarriage, injuries to un-
born children, exposure of infants,
hurt (simple and grievous), wrongful
restraint and confinement, criminal
force, assault, kidnapping, abduction,
slavery, selling or buying minor for
prostitution, unlawful labour, rape,
unnatural offence (c. XVI). |
| 4. Affecting corporeal or incorporeal
property | .. { Theft, extortion, robbery, dacoity, cri-
minal breach of trust, receiving sto-
len property, cheating, fraudulent
deeds and dispositions of property,
mischief, criminal trespass, docu-
ments (forgery), trade and property
marks, currency and bank notes
(c. XVII). |
| 5. Affecting reputation | .. { Defamation (c. XXI).
{ Intimidation, insult and annoyance
(c. XXII). |

The Indian Penal Code came into operation on January 1, 1862. It takes effect throughout British India. For every act or omission contrary to the provisions of the Code a person is liable to punishment under it

(ss. 1 and 2). Every person is made liable to punishment under the Code without distinction of nation or rank. A foreigner, who enters the British territories and accepts the protection of British laws, virtually submits himself to their operation. The Penal Code does not exempt any one from the jurisdiction of criminal Courts, but the following are exceptions to this principle :—

- | | |
|-------------------------|--------------------|
| (1) The Sovereign. | (4) Alien enemies. |
| (2) Foreign Sovereigns. | (5) Foreign army. |
| (3) Ambassadors. | (6) Men-of-war. |

The Courts in British India are prohibited from issuing a process against the Governor General, the Governor of a Province, or the Secretary of State, or the Crown Representative. Similar immunity extends to the Chief Justices and Judges of the High Courts in British India.

The territorial jurisdiction of ordinary criminal Courts will extend into the sea as far as a cannon shot will reach, which is usually calculated to be a marine league, or three miles. The territories of a State include the portion of the sea lying along and washing its coast, commonly called the maritime territory.

Leading case :—*R. v. Kastyā Rama.*

An offence committed *outside* British India may, however, be tried as an offence committed *in* British India under the following circumstances :—

1. By virtue of any Indian law (s. 3).
2. When such offence is committed by
 - (1) any native Indian subject of His Majesty;
 - (2) any other British subject within the territories of any Native Prince or Chief in India;
 - (3) any servant of the King, whether a British subject or not, within the territories of any Native Prince or Chief in India;
 - (4) any person on any ship or aircraft registered in British India wherever it may be (s. 4).

Where an offence is committed *beyond* the limits of British India but the offender is found *within* its limits he may be

- (I) extradited; or (II) tried in British India.

(I) The scene of offence may be—

- Extradition.
- (1) a Native State in which the Government has a Political Agent; or
 - (2) a foreign independent State; or
 - (3) some part of British Dominions.

(1) If in a Native State any one of the offences described in the first schedule to the Indian Extradition Act is committed, the Political Agent may issue warrant to the District Magistrate, within whose jurisdiction the offender has escaped, for his arrest, provided he is not an European British subject. A requisition can also be made by any Native State to the Government for the surrender of an accused person.

(2) If there is a treaty with a foreign independent State or a State which comes within the purview of Extradition Acts of 1870 and 1878 then the accused may be surrendered on requisition to the Government if the offence is of a non-political character. If the foreign State is not of the above description, then the offender will not be handed over.

(3) An offender, who has committed treason or an offence punishable with rigorous imprisonment for a year or more, is liable to be apprehended and returned in the manner provided by the Fugitive Offenders Act, 1881.

(II) The Courts in India are empowered to try offences committed out of British India either on

(A) Land, or (B) High Seas.

(A) By virtue of ss. 3 and 4 of the Penal Code and s. 188 of the Criminal Procedure Code, local Courts can try offences committed outside British India, provided, if there is a Political Agent, for the territory in which the offence is committed, he certifies that the charge ought to be inquired into in British India. The High Courts, if empowered by the Governor General in Council, can try offences committed by the Christian subjects within the territory of a Native State.

(B) The jurisdiction to try offences committed on the high seas is known as Admiralty jurisdiction. It is founded on the principle that a ship on the high seas is a floating island belonging to the nation whose flag she is flying.

It extends over—

(1) Offences committed on British ships. Such offences may be committed—

(a) on the high seas or in rivers, below the bridges, where the tide ebbs and flows, and where great ships go; or

(b) at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction.

(2) Offences committed on foreign ships in British territorial waters.

(3) Pirates.

The admiralty jurisdiction does not extend to any river, creek or port within the body of a country. It extends to all persons, British subjects or foreigners, who happen to be on board such ships. With regard to sea-shore the ordinary criminal Courts and the Courts of Admiralty have alternate jurisdiction between high and low water mark. By virtue of the Admiralty Offences Act of 1849 and the Merchant Shipping Act of 1894, offences on the high seas are triable in India by ordinary criminal Courts as if they were committed within the local jurisdiction of those Courts. Several statutes are passed conferring upon the Indian High Courts the same jurisdiction as is vested in the Admiralty Courts of England. This jurisdiction has also been conferred on mofussil Courts by the Merchant Shipping Act of 1894.

The High Courts of Bombay, Calcutta and Madras have the same Admiralty jurisdiction as that of the late Supreme Courts. The

jurisdiction of the Supreme Courts was that of the Court of Admiralty in England as it stood in 1823. Under Act XVI of 1891, the High Courts of Bengal, Madras and Bombay are declared to be Colonial Courts of Admiralty within the meaning of statute 53 and 54 Vic. c. 27, and they now have the same jurisdiction as the Admiralty Courts of England. The offences which come within the Admiralty jurisdiction are defined by the Merchant Shipping Act, 1894.

Admiralty jurisdiction was vested in the mofussil Courts by 12 & 13 Vic. c. 96, and s. 686 of the Merchant Shipping Act.

The *procedure* to be followed in a case where an offence is committed on the high seas is the procedure laid down in the Criminal Procedure Code. Formerly, such an offence was punished as if it was committed in England. But now by virtue of 37 & 38 Vic. c. 27, the offender is liable to such punishment as might have been inflicted upon him if the offence were committed in British India. If the offence is not punishable by the Penal Code, the offender is liable to such punishment as shall correspond to the punishment to which he would be liable under the English law. Thus three conditions are essential :—

- (1) The offence must be an offence under the English law.
- (2) The trial must be conducted under the Code of Criminal Procedure.
- (3) The punishment must be regulated by the Penal Code.

Leading cases :—**R. v. Elmstone.**

R. v. Barton.

R. v. Gunning.

Indian Courts cannot try foreigners who are in India for offences committed by them outside British India.

Laws not affected by the Code The Code does not repeal, vary, suspend or affect any provisions of—

- (1) statute 3 & 4 Will. IV, c. 85;
- (2) any subsequent Act of Parliament affecting the East India Company, or British India, or the inhabitants thereof;
- (3) any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen;
- (4) any special or local law (s. 5).

An offence expressly made punishable by a special or local law will be punishable under the Code. But if the Legislature in framing the special or local law intended to exclude the operation of the Code, no prosecution under the Code would lie. However, a person cannot be punished both under the Code and the special law for the same offence.

In Chapter II the leading terms used in the Code are defined and explained and the meanings thus announced are steadily adhered to throughout the subsequent Chapters.

General Explanations
Chap. II.

An act includes an illegal omission save where the contrary appears from the context. Where the causing of an effect is an offence if it is caused either by an act or by an omission, the causing of that effect partly by an act and partly by an omission is the same offence (s. 36).

When an offence is committed by several acts, each person intentionally committing one of those acts, either singly or jointly with others, commits the offence (s. 37).

Joint offenders. Where a criminal act is committed jointly by several persons the following principles will apply :—

1. When the act is done *in furtherance of the common intention* of all, each of such persons is liable for it in the same manner as if it were done by him alone (s. 34).

Mere presence does not raise a presumption of complicity. A person not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act.

2. When the act is only criminal by reason of its being done with a criminal knowledge or intention, each is liable only to the extent of his own knowledge or intention (s. 35).

A person assisting the accused who actually performs the act must be shown to have the particular intent or knowledge. If an act which is an offence, without reference to any criminal knowledge or intention on the part of the doer, is done by several persons, each of them is liable for the offence.

3. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act (s. 38).

Section 34 deals with acts done with a common intention, s. 38, with different intentions.

Punishment.
Chap. III.

The punishments to which offenders are liable are—

- | | |
|---|----------------------------|
| 1. Death | (2) simple; |
| 2. Transportation. | (3) solitary; |
| 3. Penal servitude. | 5. Forfeiture of property. |
| 4. Imprisonment : | 6. Fine (s. 63). |
| (1) rigorous (i. e., with hard labour); | |

In addition to these there are punishments of whipping (Act IV of 1909) and of detention in the reformatories of Borstal Schools in the case of juvenile offenders (Act VIII of 1897 and Bom. Act XVIII of 1929 and other local Acts).

1. Sentence of death may be commuted without the consent of the offender by the Central Government or Provincial Government for any other punishment (s. 54). The punishment of death *may* be awarded in the following cases:—

- (1) Waging war against the King (s. 121).
- (2) Abetting mutiny actually committed (s. 132).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (s. 194).
- (4) Murder (s. 302).
- (5) Abetment of suicide of a minor, or an insane or an intoxicated person (s. 305).
- (6) Attempt to murder by a person under sentence of transportation, if hurt is caused (s. 307).
- (7) Dacoity accompanied with murder (s. 396).

Sentence of death *must* be awarded where a person who is under sentence of transportation for life commits murder (s. 303).

2. The Provincial Government may commute, without the consent of the offender, a sentence of transportation for life to imprisonment not exceeding fourteen years (s. 55). This does not affect the right of His Majesty the King-Emperor or the Governor General to grant pardons, reprieves, respites, or remissions of punishment (s. 55A). In calculating fractions, transportation for life is reckoned as equivalent to twenty years (s. 57). Offenders sentenced to transportation are dealt with in the same manner as if sentenced to rigorous imprisonment, until they are transported (s. 58).

Where an offender is punishable with imprisonment for seven years or upwards, transportation for not less than seven years and not exceeding the term for which he is liable to imprisonment may be substituted (s. 59). This provision enables a Court to substitute a sentence of transportation for that of imprisonment. It does not give power to a Court which could not pass a sentence of imprisonment for seven years or upwards. Such sentence cannot be made up by amalgamating two or more sentences together. The punishment awarded for one offence alone must be imprisonment for seven years at least. This section does not apply to sentences under a special or local law.

Transportation for life must be inflicted

- (1) for unlawful return from transportation (s. 226); and
- (2) for being a 'thug' (s. 311).

3. Europeans and Americans committing offences punishable with transportation or with imprisonment for long terms are sentenced to penal servitude under the Penal Servitude Act (XXIV of 1855). But where such persons would, but for this Act, be liable to be transported for a term exceeding ten years (not life), they are liable to be kept in penal servitude for a term exceeding seven years (s. 56).

'Penal servitude' consists in keeping an offender in confinement and compelling him to hard labour.

4. The maximum period of imprisonment is fourteen years (s. 55); and the lowest actually named for a given offence, viz., misconduct by a drunken person, is twenty-four hours (s. 510); but the minimum is unlimited except in two cases:—

- (1) If at the time of committing robbery or dacoity the offender uses a deadly weapon or causes grievous hurt, or
- (2) if while committing this offence he is armed with a deadly weapon, he is punished with imprisonment for not less than seven years (ss. 397 and 398).

Sentence of imprisonment may be, in certain cases, wholly or partly rigorous or simple (s. 60). But in three cases the imprisonment must be rigorous:—

- (1) Giving or fabricating false evidence with intent to procure conviction of a capital offence (s. 194).
- (2) Unlawful return from transportation (s. 226).

(8) House-trespass to commit an offence punishable with death (s. 449).

There are twelve offences that are punishable with simple imprisonment only : see pages 33, 34.

Solitary confinement may be inflicted for offences punishable with rigorous imprisonment. The offender may be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding *three* months in the whole. But the solitary confinement must not exceed—

one month, if the term of imprisonment does not exceed six months;
two months, if the term of imprisonment exceed six months but does not exceed one year;

three months, if the term of imprisonment exceeds one year (s. 73).

In executing a sentence of solitary confinement, such confinement must not exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such period: and when the imprisonment awarded exceeds three months, the solitary confinement must not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such period (s. 74).

A sentence of solitary confinement for more than three months cannot be passed even if a person is convicted at one trial of more than one offence. Such confinement is awarded for offences under the Code only. Even then it cannot be awarded where imprisonment is not part of the sentence or where the imprisonment is in lieu of fine. It may be awarded in a summary trial. Solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole imprisonment is illegal, though not more than fourteen days is awarded.

5. The punishment of forfeiture of the property of the offender is now abolished except in the following cases :—

Forfeiture.

(1) Where a person commits depredation on the territories of any power at peace with the King-Emperor, he is liable, in addition to other punishments, to forfeiture of any property used, or intended to be used, in such depredation, or acquired thereby (s. 126).

(2) Where a person receives property taken as above mentioned or in waging war against any Asiatic Power at peace with the King-Emperor, he is liable to forfeit such property (s. 127).

(3) A public servant, who improperly purchases property, which, by virtue of his office, he is legally prohibited from purchasing, forfeits such property (s. 169).

6. Fine is awarded as a sentence by itself in the following cases :—

(1) A person, in charge of a merchant vessel, negligently allowing a deserter from the Army, Navy or Air Force to obtain concealment in such vessel is liable to a fine not exceeding Rs. 500 (s. 137).

Fine.

(2) The owner or occupier of land, on which a riot or an unlawful assembly is held, and any person having or claiming any interest in such

of the crime. The subsequent offence must also be punishable with not less than *three* years' imprisonment. If the subsequent offence is committed by a person *previously* to his being convicted of the first offence he cannot be subjected to enhanced punishment. Attempts not specifically made offences within Chapters XII and XVII are not governed by this provision. The previous conviction of an accused for an offence under these Chapters cannot be taken into consideration at a subsequent conviction for abetment of an offence under those Chapters.

General Exceptions.
Chap. IV.

The following acts are not offences under the Code :—

1. Act of a person bound by law to do a certain thing (s. 76).
2. Act of a Judge acting judicially (s. 77).
3. Act done pursuant to an order or a judgment of a Court (s. 78).
4. Act of a person justified, or believing himself justified, by law (s. 79).
5. Act caused by accident (s. 80).
6. Act likely to cause harm done without criminal intent to prevent other harm (s. 81).
7. Act of a child under 7 years (s. 82).
8. Act of a child above 7 and under 12 years but of immature understanding (s. 83).
9. Act of a person of unsound mind (s. 84).
10. Act of an intoxicated person (s. 85).
11. Act not known to be likely to cause death or grievous hurt done by consent of the sufferer (s. 87).
12. Act not intended to cause death done by consent of the sufferer (s. 88).
13. Act done in good faith for the benefit of a child or an insane person or by the consent of the guardian (s. 89).
14. Act done in good faith for the benefit of a person without consent (s. 92).
15. Communication made in good faith to a person for his benefit (s. 93).
16. Act done under threat of death (s. 94).
17. Acts causing slight harm (s. 95).
18. Acts done in private defence (ss. 96-106).
1. Act done by a person bound, or by mistake of fact believing himself bound, by law (s. 76).

The maxim *respondet superior* has no application to cases where an offence is committed by a subordinate official acting under the orders of his superior. The official is bound to exercise his own judgment and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible for his act.

Leading cases :— R. v. Latifkhan.

2. Act of a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (s. 77).

A Judge will be protected where he is acting judicially and not ministerially. If he acts without *jurisdiction* and without *good faith* he would be responsible.

3. Act done pursuant to the judgment or order of a Court of Justice while such judgment or order remains in force, and the person doing the act in good faith believes that the Court has jurisdiction although it has not (s. 78). This section differs from the preceding section on the question of jurisdiction. It protects officers acting under the authority of a judgment or order of a Court even though the Court has no jurisdiction provided the officer believed in good faith that the Court had jurisdiction.

4. Act done by a person justified by law, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law to do it (s. 79).

Mistake is a slip made by chance. It is not mere forgetfulness. Under ss. 76 and 79 it should be one of fact and not of law. An honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which a prisoner is indicted an innocent act, is a good defence. An alleged offender is deemed to have acted under that state of facts which he, in good faith and on reasonable grounds, believed to exist when he did the act alleged to be an offence. *Ignorantia fidei* doth excuse, for such an ignorance many times makes the act itself morally involuntary. But if an act is clearly a wrong in itself, and a person, under a mistaken impression as to facts which render it criminal, commits the act, then he is guilty of an offence.

Mistake of law is no defence. Because every person* of the age of discretion is bound to know the law, and presumed so to do. If a person infringes the statute law of the country through ignorance or carelessness he abides by the consequences of his error. The maxim *ignorantia juris non excusat* admits of no exception in its application to criminal offences. Even a foreigner who cannot reasonably be supposed in fact to know the law of the land is not exempted. Similarly, ignorance of a statute newly passed will not save a person from punishment.

Leading cases:—**R. v. Prince.**
R. v. Tolson.
R. v. Esop.
Bhawoo v. Mulji.

Mayne deduces the following five rules, showing the extent to which ignorance of an essential fact may be pleaded as a defence, from the judgments in *Prince's* case.

(a) Where an act is in itself plainly criminal, and is more severely punishable if certain circumstances co-exist, ignorance of the existence of such circumstances is no answer to a charge for the aggravated offence.

(b) Where an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then ignorance of such circumstances is an answer to the charge.

(c) Even in the last named case, the state of the defendant's mind must amount to absolute ignorance of the existence of the circumstance which alters the character of the act, or to a belief in its non-existence.

(d) Where an act which is itself wrong is, under certain circumstances, criminal, a person who does the wrong act cannot set up as a defence that he was ignorant of the facts which turned the wrong into a crime.

(e) Where a statute makes it penal to do an act under certain circumstances, it is a question upon the wording and object of the particular statute whether the responsibility of ascertaining that the circumstances exist is thrown upon the person who does the act or not. In the former case his knowledge is immaterial.

5. Accident. This must have been caused
 - (1) without criminal knowledge or intention,
 - (2) in the doing of a lawful act,
 - (i) in a lawful manner,
 - (ii) by lawful means, and
 - (iii) with proper care and caution (s. 80).

An 'accident' is something that happens out of the ordinary course of things.

6. Act done with the knowledge that it is likely to cause harm but done in good faith and without any criminal intention to cause harm, for the purpose of preventing, or avoiding, other harm to person or property (s. 81).

It is a maxim of the English law that *actus non facit reum, nisi mens sit rea* (the intent and act must both concur to constitute a crime.) A crime is not committed if the mind of the person doing the act in question be innocent. The above maxim has undergone a modification owing to the greater precision of modern statutes. Crimes are now more accurately defined by statutes than before. It has become necessary to look at the object of each Act that is under consideration to see whether and how far knowledge is of the essence of the offences created. In three cases *mens rea* is not an essential ingredient in an offence :

- (1) cases not criminal in real sense, but which, in the public interest, are prohibited under a penalty ;
- (2) public nuisances ; and
- (3) cases criminal in form but which are only a summary mode of enforcing a civil right.

The above maxim has little application to offences under the Penal Code because the definitions of various offences expressly contain an ingredient as to the state of mind of the accused. Under the Code, therefore, *mens rea* will mean one thing or another according to a particular offence. The guilty mind may be a dishonest mind, or a fraudulent mind, or a rash or negligent mind, and so forth.

It may be observed that criminal law has nothing to do with motives of offenders. Intention is quite different from motive. A person may do an act with a very high and laudable motive but if his act amount to a crime he will be guilty. Where some Hindus removed cows from the possession of some Mahomedans to prevent the cows from being slaughtered, they were held guilty of theft.

Whether a person can for self-preservation inflict harm on others is discussed at pp. 55, 56. Such acts will not exempt the offender from the full severity of law. It is murder to kill another to save one's own life.

Leading case :—*R. v. Dudley (or Mignonette case).*

(7) Act done by a child under *seven* years (s. 82); or by a child above *seven* and under *twelve* years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct (s. 83).

According to English law an infant between the age of *seven* and *fourteen* is presumed to be *doli incapar*. A boy of *fourteen* is presumed to be physically incapable of committing rape.

(8) Act done by a person who, at the time of doing it, by reason of *unsoundness of mind*, is.

- (1) incapable of knowing the nature of the act, or
- (2) that he is doing what is either wrong or contrary to law (s. 84).

The 'unsoundness of mind' may be temporary or permanent, natural or supervening. But it must affect the cognitive faculties of the mind. If the offender is conscious that the act was contrary to law and one which he ought not to do, he is punishable. The act to be not punishable must be such as would have been excused by law, if the facts had been as the person of unsound mind supposed.

Leading cases :—*R. v. M'Naughton.*

R. v. Lakshman.

R. v. Sakharan.

The doctrine of irresistible criminal impulse has not been accepted by the Calcutta High Court.

(9) Act done by a person who, at the time of doing it, by reason of intoxication, is

- (1) incapable of knowing the nature of the act; or
- (2) that he is doing what is either wrong or contrary to law;
- (3) provided that the thing which intoxicated him was administered to him without his knowledge or against his will (s. 85).

If an intoxicated person commits an offence requiring a particular intent or knowledge, he is dealt with as if he had that intent or knowledge, unless the thing which intoxicated him was administered to him without his knowledge or against his will (s. 86).

Drunkenness is one thing and disease to which it leads is a different thing. If a man by drunkenness bring on a state of disease which causes such a degree of madness, even for a time, which would relieve him of responsibility if it had been caused in any other way, then he would not be criminally responsible.

(10) Act not intended, and not known, to be likely to cause death or grievous hurt, done by consent of the person, above eighteen years, to whom harm is caused (s. 87).

Ordinary games, such as fencing, boxing, football and the like are protected by this section.

11. Act not intended, and not known, to be likely to cause death, done in good faith by consent of the person to whom harm is caused for his benefit (s. 88).

Surgical operations are protected under this section.

12. Act done in good faith for the benefit of a person under twelve years, or of an insane person, by or by the consent of his guardian. This exception does not extend to—

(1) Intentional causing, or attempting to cause, death.

(2) The doing of anything which the doer knows to be likely to cause death, except to prevent death or grievous hurt, or to cure any grievous disease or infirmity.

(3) Voluntary causing, or attempting to cause, grievous hurt (except as above).

(4) The abetment of any offence, to the committing of which it would not extend (s. 89).

A consent to be a true one must not have been given—

- | | |
|--|--|
| (1) by a person under
fear of injury, | } and the person obtaining the consent
knows or has reason to believe this ; |
| (2) by a person under
a misconception
of fact, | |
| (3) by a person of un-
sound mind, | } and who is unable to understand the
nature and consequence of that to which
he gives his consent ; |
| (4) by a person who is
intoxicated, | |

(5) by a person under twelve years of age (s. 90).

An honest misconception by both the parties, however, does not invalidate the consent.

Sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause to the person giving the consent (s. 91), e.g., causing miscarriage, public nuisance, offences against public safety, etc.

13. Act done in good faith for the benefit of a person, even without consent, if it is impossible for him to give consent, or is incapable of giving it, and there is no guardian from whom it is possible to obtain it in time for the thing to be done with benefit (s. 92). This exception is subject to the same provisos as s. 89, with the difference that it will not extend to causing hurt except to prevent death or hurt.

14. A communication made in good faith, although causing harm to the person to whom it is made, if it is for his benefit (s. 93), e.g., communication in good faith by a surgeon to a patient that in his opinion he cannot live.

15. Act [except (a) murder, and (b) offence against the State punishable with death] done under threats which, at the time of doing it, reasonably cause the apprehension of instant death; provided the doer did not of his own accord, or from an apprehension of harm short of death, place himself in the situation by which he became subject to

such constraint (s. 94) Fear of grievous hurt is not a sufficient justification. Mere menace of future death will not be sufficient.

No one can plead the excuse of necessity or compulsion as a defence to an act otherwise penal except as provided by this section.

Leading cases :— **R. v. Deoji,**
R. v. Latifkhan.
R. v. Maganlal.

The Penal Code does not recognize the archaic English doctrine of marital compulsion.

16. Act causing such a slight harm that no person of ordinary sense and temper would complain of it (s. 95).

This section deals with those cases which come within the letter of the penal law but not within its spirit. It is based on the maxim *de minimis non curat lex* (the law does not take account of trifles).

17. Act done in exercise of the right of private defence (s. 96):

Every person has a right, subject to certain restrictions, to defend—
Private defence.

(1) His own body and the body of any other person against any offence affecting the human body.

(2) The property, whether movable or immovable, of himself or of any other person, against any act, which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit any of such offences (s. 97).

(3) Against an act, which would otherwise be a certain offence, but is not that offence, by reason of the doer being of unsound mind, a minor, an intoxicated person, or a person acting under a misconception of fact (s. 98).

There is no right of private defence against the following acts :—
Exceptions to the right of defence.

(1) An act which does not reasonably cause apprehension of death or of grievous hurt, if done or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

(2) Same as above if done by the direction of a public servant.

(3) Cases in which there is time to have recourse to the protection of public authorities (s. 99).

The right of defence does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence (*ibid*).

The right of private defence of the *body* extends to the causing of death or any other harm to the assailant under the following circumstances :—
Defence of body.

(1) An assault causing reasonable apprehension of death.

In this case if the defender be so situated that he cannot exercise the right without risk of harm to an innocent person, he may even run that risk (s. 106).

(2) An assault causing reasonable apprehension of grievous hurt.

(3) An assault with the intention of committing rape.

- (4) An assault with the intention of gratifying unnatural lust.
- (5) An assault with the intention of kidnapping or abducting.
- (6) An assault with the intention of wrongfully confining a person under circumstances which may cause him to apprehend that he will be unable to have recourse to the public authorities for his release (s. 100).

Subject to the above restrictions, the right of private defence of body extends to the causing of any harm short of death (s. 101).

It commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed : and it continues as long as such apprehension of danger to the body continues (s. 102).

The right of private defence of *property* extends to the causing of death or any other harm to the assailant under the following circumstances :—

- (1) Robbery.
- (2) House-breaking by night.
- (3) Mischief by fire to building, tent, or vessel, used as human dwelling or for custody of property.
- (4) Theft, mischief, or house-trespass, reasonably causing the apprehension of death or grievous hurt (s. 103).

Subject to the above restrictions, the right of private defence of property extends to the causing of any harm short of death (s. 104). It commences when a reasonable apprehension of danger to the property commences and continues against—

- (1) Theft, till
 - (a) the offender has effected his retreat with the property, or
 - (b) the assistance of the public authorities is obtained, or
 - (c) the property has been recovered.
- (2) Robbery, as long as
 - (a) the offender causes or attempts to cause to any person death, or hurt, or wrongful restraint, or
 - (b) the fear of instant death, or of instant hurt, or of instant personal restraint continues.
- (3) Criminal trespass or mischief, as long as the offender continues in the commission of criminal trespass or mischief.
- (4) House-breaking by night, as long as the house-trespass, which has been begun by such house-breaking, continues (s. 105)

Abetment.
Chap. V.

There are three kinds of abetment dealt with in the Code. A person abets the doing of a thing, who

- (1) instigates any person to do that thing ; or
- (2) engages with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of the conspiracy and in order to the doing of that thing ; or
- (3) intentionally aids, by any act or illegal omission, the doing of that thing.

A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing (s. 107).

An abettor is a person who abets

- (a) the commission of an offence, or
- (b) the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor (s. 108).

It should be noted that—

- (1) Abetment of an illegal omission may amount to an offence (*ib.*, Explan. 1).
- (2) It is not necessary that the act abetted should be committed (*ib.*, Explan. 2).
- (3) The person abetted need not be capable of committing an offence, nor have any guilty intention or knowledge (*ib.*, Explan. 3).
- (4) The abetment of an abetment is an offence (*ib.*, Explan. 4).
- (5) It is not necessary in abetment by conspiracy that the abettor should concert the offence with the person abetted (*ib.*, Explan. 5).
- (6) A person will be guilty of abetment who abets the commission of any act *without* and *beyond* British India which would constitute an offence if committed in British India (s. 108A).

If the act abetted is committed but no express provision is made for its punishment, then it shall be punished with the punishment provided for the offence abetted (s. 109).

If a person abetted does the act with a different intention or knowledge from that of the abettor, the latter will be punished as if the act had been done with his intention or knowledge (s. 110). The liability of the person abetted is not affected by this section.

If the act done is different from the one abetted the abettor is still liable for it, if it is a probable consequence of the abetment, and committed under the influence of the abetment (s. 111). The liability is the same where the effect produced is different from that intended by the abettor (s. 113).

The abettor is liable to cumulative punishment for the act abetted and for the act done if the latter is a distinct offence (s. 112).

If the abettor is present when the offence abetted is committed, he is deemed to have committed such act or offence (s. 114).

Merely presence will not render a person liable. He must be sufficiently near to give assistance, and he must participate in the act, no matter whether he is an eyewitness to the transaction or not. Presence during the whole transaction is not necessary (*ibid*).

If an offence punishable with death or transportation is abetted and no express provision is made for the punishment of such abetment, then the offender will be punished with imprisonment extending to seven years if the offence is not committed; but if an act causing harm is done in consequence, the imprisonment shall be extended to fourteen years (s. 115). If in such case the offence is punishable with imprison-

ment, then the offender is punishable with imprisonment which may extend to one-fourth part of the longest term provided for that offence (s. 116). If in the above case the abettor or person abetted be a public servant whose duty it is to prevent such offence, the imprisonment may extend to one-half of the longest term provided for the offence (*ibid*).

Abetting commission of an offence by the public or by more than ten persons is punishable with imprisonment extending to three years (s. 117).

There are three sections which punish concealment of a design to commit offences by persons other than the accused, viz., ss. 118, 119 and 120.

According to English law criminals are divided into four classes :—

(1) Principal in the first degree : one who is the actual perpetrator of the crime.

(2) Principal in the second degree : one by whom the actual perpetrator of the crime is aided and abetted at the very time when it is committed.

(3) Accessory before the fact : one who being absent at the time when the felony is committed, yet procures, counsels, commands, or instigates another to commit a felony.

(4) Accessory after the fact : one who, knowing a felony to have been committed by another, receives, relieves, comforts, assists, harbours, or maintains, the felon. There is no distinction between 'principal in the first degree' and 'principal in the second degree' in the Code. 'Accessory after the fact' is treated in scattered sections. See provisions relating to harbouring, ss. 52A, 180, 136, 137, 157, 212, 216.

Criminal conspiracy is now made a substantive offence under the Code. It was hitherto punishable only as a species of abetment. It arises when two or more persons agree to do or cause to be done—

(a) an illegal act ; or

(b) an act which is not illegal by illegal means.

Such an agreement may be to commit an offence. But if it is not, it is necessary that some overt act besides the agreement is done by one or more parties to such agreement in pursuance thereof (s. 120A). If the offence conspired to is punishable with death, transportation or rigorous imprisonment for two years or upwards, the offender is punishable as an abettor : but in any other case, he is liable to be punished with rigorous imprisonment for six months, or fine, or both (s. 120B).

Offences against the
State.
Chap. VI

Offences against the State may be classified as follows : -

I. Waging war against the King.

II. Assaulting high officers.

III. Sedition.

IV. Waging war against a Power at peace with the King.

V. Permitting or aiding the escape of a State prisoner.

I. Waging war against the King.

1. Waging or attempting to wage war, or abetting waging of war (s. 121).

2. Conspiring to commit, within or without British India, offences punishable by s. 121 (s. 121A).

3. Collecting men, arms, or ammunition, or making any other preparation with a view to waging such war (s. 122).

4. Concealing with intent to facilitate a design to wage such war by any act or illegal omission (s. 123).

II. Assaulting Governor-General, or Governor of any Province, or a member of the Council of the Governor-General of India with intent to compel or restrain the exercise of any lawful power (s. 124).

Sedition.

III. A person commits sedition who,

(1) by words (spoken or written), or by visible representation,

(2) brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards

(3) His Majesty or the Government established by law in British India or British Burma, or the Crown Representative (s. 124A).

It should be noted that —

(1) 'Disaffection' includes disloyalty and feelings of enmity (*ib.*, Explan. 1).

(2) Comments expressing disapprobation of the measures of Government to obtain their alteration, without exciting hatred, contempt, or disaffection, do not constitute this offence (*ib.*, Explan. 2).

(3) Comments expressing disapprobation of the administrative action of Government, without exciting hatred, contempt or disaffection, do not constitute this offence (*ib.*, Explan. 3).

Any one who uses in any way words or printed matter for the purpose of exciting disaffection, be he the writer of those words or not, is liable. Publication of some kind is necessary. The successful exciting of feelings of disaffection is placed on the same footing as the unsuccessful attempt to excite them.

The law does not excuse the publication in newspapers of seditious writing copied from other papers. The editor of a paper is liable for seditious letters appearing in the paper.

Leading cases :— R. v. Bal Gangadhar Tilak.

R. v. Jogendra Chandra Bose.

(or Bangobasi case).

IV. Waging war against a Power at peace with the King.

1. Waging, attempting to wage, or abetting the waging of such war against the Government of any Asiatic Power at peace with the King (s. 125).

2. Committing, or preparing to commit, depredation on the territories of any Power at peace with the King (s. 126).

3. Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in the two last preceding sections (s. 127).

V. Permitting or aiding the escape of a State prisoner.

1. Public servant voluntarily allowing a prisoner of State or war, in his custody, to escape (s. 128).

2. Public servant negligently suffering a prisoner of State or war, in his custody, to escape (s. 129).

3. Aiding the escape, or rescuing, or attempting to rescue or harbouring, or concealing or resisting the recapture, of such prisoner (s. 130).

No person, subject to Articles of War, is subject to punishment under this Code for any offence relating to the Army, Navy and Air Force defined in this Chapter (s. 139).

Army, Navy & Air
Force offences. Chap.
VII.

This Chapter is framed in order that persons, not military, who abet a breach of military discipline, should not be liable under the military penal law but under the Code.

The following offences relating to the Army, Navy and Air Force find place in the Code :—

1. Abetting mutiny, or attempting to seduce any officer, sailor, soldier or airman, from his allegiance or duty (s. 131).

2. Abetment of mutiny, if mutiny is committed in consequence (s. 132).

3. Abetment of such an assault by an officer, soldier, sailor, or airman, on his superior officer, when in the execution of his office (s. 133).

4. Abetment of such an assault if the assault is committed (s. 134).

5. Abetment of the desertion of an officer, soldier, sailor, or airman (s. 135).

6. Knowingly harbouring a deserter (s. 136).

7. Deserter from Army, Navy or Air Force of the King concealed on board a merchant vessel through negligence of master or person in charge of the vessel though he is ignorant of such concealment (s. 137).

8. Abetment of act of insubordination by an officer, soldier, sailor or airman, the act abetted being actually committed in consequence of the abetment (s. 138).

9. Wearing the garb, or carrying any token resembling any garb or token used by a soldier, sailor or airman with the intention that it may be believed that the wearer is a soldier, sailor or airman (s. 140). The gist of the offence is the intention of the accused. Merely wearing a soldier's dress without the specific intention is no offence, e.g., actors put on soldier's garb while acting on the stage.

There are six sections in the Code dealing with false personation—

1. Personation of a soldier (s. 140).

2. Personation of a public servant (s. 170).

3. Wearing the garb or carrying the token used by a public servant (s. 171).

4. Personation of a voter at an election (s. 171D).

5. Personation for the purpose of an act or proceeding in a suit or prosecution (s. 205).

6. Personation of a juror or assessor (s. 229).

Offences against public tranquillity hold a middle place between the State offences on the one hand and crimes against person and property on the other. They are four :

Public tranquillity.
Chap. VIII.

I. Unlawful assembly.

II. Rioting.

III. Promoting enmity between different classes.

IV. Affray.

I. An 'unlawful assembly' is an assembly of five or more persons, if their common object is

1. To overawe by criminal force
 - (a) the Central Government, or
 - (b) The Provincial Government, or
 - (c) the Legislature, or
 - (d) any public servant in the exercise of lawful power.
2. To resist the execution of law or legal process.
3. To commit mischief, criminal trespass, or other offences.
4. By criminal force
 - (a) to take or obtain possession of any property, or
 - (b) to deprive any person of any incorporeal right, or
 - (c) to enforce any right or supposed right.
5. By criminal force to compel any person
 - (a) to do what he is not legally bound to do, or
 - (b) to omit what he is legally entitled to do (s. 141)

[six months, or fine, or both. If armed with a deadly weapon, two years, or fine, or both (ss. 143, 144)].

The assembly must consist of five or more persons. It is immaterial whether the common object is in their minds when they come together, or whether it occurs to them afterwards. There must be some present and immediate purpose of carrying into effect the common object. A meeting for deliberation only is not an unlawful assembly. Persons maintaining their own right or supposed right against the aggression of other people do not commit this offence.

An assembly not unlawful when it assembled may subsequently become an unlawful one (Expln.). Illegal acts of one or two members do not change the lawful character of an assembly. Similarly, a lawful assembly does not become unlawful merely because the members know that their assembly would be opposed and a breach of the peace would be committed.

Whoever, being aware of facts which render an assembly an unlawful one, intentionally joins it, or continues in it, is a member of that assembly (s. 142). Persons may have associated themselves with a mob from perfectly innocent motives, but if the mob becomes an unlawful assembly, and they take part in its proceeding, they will be liable. Every such member is deemed guilty of an offence committed in prosecution of the common object.

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in pro-

secution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence (s. 149). This section prevents the accused from putting forth the defence that he did not with his *own* hand commit the offence committed in prosecution of the common object. Common object does not mean common intention. All will be guilty of any offence done in prosecution of the common object, though there was no common intention to commit the offence as a means to the end. But members of an unlawful assembly may have a community of object only upto a certain point and beyond which they may differ in their objects.

Leading case :—R. v. Sabedali.

Other cognate offences—

1. Joining an unlawful assembly armed with a deadly weapon (s. 144).

2. Joining or continuing in an unlawful assembly knowing it has been commanded to disperse (s. 145).

3. Hiring of persons to join an unlawful assembly (s. 150).

4. Harboursing persons hired for an unlawful assembly (s. 157).

5. Being hired to take part in an unlawful assembly (s. 158).

Persons, who are engaged or hired to do any of the acts which make an assembly unlawful, are likewise punished (*ibid*).

II. When (1) force or violence is used, (2) by an unlawful assembly or by any member thereof, (3) in prosecution of the common object, every member is guilty of rioting (s. 146). [2 years, or fine, or both. If armed with a deadly weapon, 3 years, or fine, or both (s. 148)].

Riot is an unlawful assembly in a particular state or activity. To constitute the offence of rioting it must be proved:

(1) that the accused, being *five* or *more* in number, formed an unlawful assembly ;

(2) that they were animated by a common unlawful object ;

(3) that force or violence was used by the unlawful assembly or any member of it ; and

(4) that such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting even if force is used by a member of it. If persons lawfully assembled for any purpose suddenly quarrel they do not commit riot.

The Penal Code does not deal with *roul*, an offence known to English law. A *roul* is an unlawful assembly of three or more persons, which has made a motion towards executing the common object. According to English law, riot is committed where *three* or *more* persons carry out their object, lawful or unlawful, in a violent and tumultuous manner.

Other cognate offences—

1. Rioting with deadly weapons (s. 148).

2. Assaulting or obstructing a public servant in the suppression of a riot (s. 152).

3. Malignantly or wantonly giving provocation with intent to cause riot (s. 153).

4. Liability of persons who own, occupy, or have an interest in land, is governed, by the following provisions :

(1) The owner, or any person having or claiming an interest in land upon which an unlawful assembly is held, or riot committed, is punishable with Rs. 1,000 fine, if he or his agent (a) knowing of the offence do not give the earliest notice thereof at the nearest police station ; or (b) believing the offence likely to be committed do not use any lawful means to prevent it ; or (c) in the event of the offence taking place do not use all lawful means to disperse the unlawful assembly or suppress the riot (s. 154).

(2) Where a riot is committed on behalf of a person who is the owner or occupier of land respecting which such riot takes place, or who claims any interest in such land, or is the subject of any dispute which caused the riot, such person is liable to a fine, if he or his agent having reason to believe that the riot is likely to be committed, or the unlawful assembly causing the riot is likely to be held, fails to use all lawful means for preventing the riot, or for suppressing and dispersing the same (s. 155).

Under similar circumstances, the agent or manager is punishable likewise (s. 156).

III. Promoting enmity or hatred between different classes of people by words or signs, or visible representations, or otherwise (s. 153A). [2 years, or fine, or both].

IV. When (1) two or more persons, (2) by fighting in a public place, (3) disturb the public peace, they commit an affray (s. 159). [1 month, or Rs. 100, or both (s. 160)].

The word 'affray' is derived from the French word *affraier*, to terrify. An 'affray' is an offence against the public peace because it is committed in a public place and is likely to cause general alarm and disturbance. 'Public place' is a place where the public go, no matter whether they have a right to go or not. No quarrelsome or threatening words will amount to an affray.

An 'affray' differs from a 'riot' :

(1) An affray cannot be committed in a private place, a riot can be.
(2) An affray is committed by two or more persons, a riot by five or more.

(3) A riot is more severely punishable than an affray.

Persons other than the actual rioters are punishable in respect of riot in the following cases :—

(1) Owner or occupier of land on which an unlawful assembly is held (s. 154).

(2) The person for whose benefit a riot is committed (s. 155).

(3) The agent of owner or occupier for whose benefit a riot is committed (s. 156).

(4) One who knowingly harbours, in any house or premises under his control, any persons being or about to be hired or employed as members of an unlawful assembly (s. 157).

(5) One who is engaged, or hired, or offers to be hired, to do or assist in doing any of the acts specified in s. 141, as making an assembly unlawful (s. 158).

Offences by or relating to public servants.
Chap. IX.

Chapter IX deals with offences by or relating to public servants. They are as follows :—

1. Whoever being, or expecting to be, a public servant
 - (i) accepts or obtains, or agrees to accept, or attempts to obtain any gratification other than legal remuneration,
 - (ii) as a reward for
 - (a) doing or forbearing to do any official act, or
 - (b) showing or forbearing to show favour or disfavour to any person in the exercise of his official functions, or
 - (c) rendering or attempting to render any service or disservice to any person, with the Central Government or any Provincial Government, or Legislature, or a public servant
 is guilty of taking gratification (s. 161). [3 years, or fine, or both].
2. Taking a gratification in order by corrupt or illegal means to influence a public servant (s. 162). [3 years, or fine, or both].
3. Taking a gratification for the exercise of personal influence with a public servant (s. 163). [1 year's simple imprisonment, or fine, or both.]
4. Public servant abetting either of the two last-mentioned offences (s. 164).
5. Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant (s. 165).
6. Public servant knowingly disobeying law with intent to cause injury to any person (s. 166).
7. Public servant framing or translating a document in a way which he knows or believes to be incorrect, intending to cause injury to any person (s. 167).
8. Public servant unlawfully engaging in trade (s. 168).
9. Public servant unlawfully buying or bidding for property (s. 169).
10. Personating a public servant, and doing or attempting to do an act in such assumed character under colour of office (s. 170).
11. Wearing a garb or carrying a token used by a public servant with fraudulent intent (s. 171).

Chapter IXA deals with offences relating to elections. It seeks to make punishable, under the ordinary penal law, bribing, undue influence, and personation, and certain other malpractices at elections. It applies to membership of any public body where the law prescribes a method of election. Persons guilty of malpractices are debarred from holding positions of public responsibility for a specified period. The following are deemed to be offences under this Chapter :—

Offences relating to elections. Chap. IXA.

1. Giving or accepting gratification with the object of exercising any electoral right (s. 171B). Gratification includes treating, i.e., giving of food, drink, entertainment or provision (s. 171E).

2. Interfering with the free exercise of any electoral right (cl. 1), threatening any candidate, voter, or any person in whom he is interested, with injury of any kind; or inducing any candidate or voter to believe that he or any person in whom he is interested will become an object of Divine displeasure or of spiritual censure (cl. 2) (s. 171C).

3. Personation at an election (s. 171D).

4. Publishing false statements in relation to the personal character or conduct of any candidate (s. 171G).

5. Illegal payments in connection with an election (s. 171H).

6. Failure to keep election accounts (s. 171-I).

Chapter X deals with contempt of the lawful authority of public servants. It contains those provisions which are intended to enforce obedience to the lawful authority of public servants.

The following provisions relate to wilful omission or evasion of the performance of a public duty :—

1. Absconding to avoid service of a summons, notice, order or other proceeding from a public servant (s. 172).

'Absconding' here means simply hiding. The section does not speak of a warrant.

2. Preventing service of summons or other proceedings, or removing the same from any place to which it is lawfully affixed, or preventing the making of any proclamation under due authority of publication thereof (s. 173).

3. Non-attendance, in obedience to a summons, notice, order, or proclamation proceeding from a public servant in person or by agent, or having attended, departing before it is lawful to depart (s. 174).

The attendance must be in a place in British India. The summons should be specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when the attendance is required. A verbal order is quite sufficient. Mere affixing of summons to a house is not enough; personal service must be attempted.

4. Intentional omission to produce or deliver up any document to a public servant by person legally bound to produce such document (s. 175).

5. Intentional omission to give, or furnish, at the time and in the manner aforesaid by law, any notice or information to a public servant (s. 176).

6. Section 202, though not appearing in this Chapter, punishes intentional omission to give information of offence by person bound to inform.

7. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (s. 187).

A person refusing to give true information to a public servant will be liable under the following circumstances :—

1. Refusing an oath or affirmation to state the truth when required by a public servant legally competent to require it (s. 178).

2. Refusing, by a person *legally bound* to state the truth, to answer any question, demanded of him by a public servant authorized to question (s. 179).

A person examined under s. 161 of the Criminal Procedure Code is not legally bound to state the truth.

3. Refusing to sign any statement made by the party refusing to sign, when required by a public servant legally competent to require that he shall sign it (s. 180).

A person giving false information to a public servant is liable in the following cases :—

1. Furnishing, as true, information which the person furnishing same, being legally bound to furnish, knows or has reason to believe to be false [6 months' simple imprisonment, Rs. 1,000 fine.] If the information respects the commission of an offence, or prevention of it, or the apprehension of the offender—two years' imprisonment or fine (s. 177).

2. False statement on oath to a public servant, or person *authorized* to administer oath, by a person legally bound to state the truth on the subject in question (s. 181).

This section refers to cases in which the false statements is made to any public servant in proceedings *other than judicial*. Section 191 refers to judicial proceedings.

3. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit to do anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person (s. 182).

4. Section 203, though not appearing in this Chapter, punishes the giving of false information respecting an offence.

The following provisions deal with obstructing or disobeying a public servant :—

1. Resistance to the taking of property by the lawful authority of a public servant (s. 183).

2. Obstructing the sale of property offered for sale by the lawful authority of a public servant (s. 184).

3. Illegal purchase or bid for property, offered for sale by the authority of a public servant, on account of any person, whether himself or any other, who is under a legal incapacity to purchase that property at such sale, or bid for such property not intending to perform the obligations thereby incurred (s. 185).

4. Obstructing a public servant in the discharge of his public functions (s. 186).

5. Intentional omission to assist public servant in the execution of his duty when bound by law to give assistance (s. 187).

6. Knowingly disobeying an order 'promulgated by a public servant lawfully empowered to promulgate it' (s. 188). [If such disobedience tends to cause obstruction or injury to any person lawfully employed, then the punishment is simple imprisonment for one month, or Rs. 200 fine, or both. If it cause riot or affray, or danger to human life, health or safety, then with imprisonment of either description for six months, or Rs. 1,000 fine, or both.]

Three things are necessary—

- (1) A *lawful* order promulgated by a public servant;
- (2) *knowledge* of the order and disobedience of it; and
- (3) the result that is likely to follow from such disobedience.

7. Threat of injury to a public servant, or to any person in whom such public servant is believed to be interested, in order to induce such public servant to do or refrain from doing an official act (s. 189).

8. Threat of injury to induce any person to refrain from applying for protection to a public servant (s. 190).

Chapter XI treats of offences relating to false evidence and public justice.

A person is said to give 'false' if he

- False evidence.*
Chap. XI. (1) being legally bound by an oath, by an express provision of law to state the truth, or
- (2) being bound by law to make a declaration upon any subject,
 - (3) makes any statement which is false, and
 - (4) which he either knows or believes to be false, or does not believe to be true (s. 191).

If the Court has no authority to administer an oath, or if it has no jurisdiction at all, the proceedings will be without jurisdiction. Oath or solemn affirmation is not a condition precedent to this offence. The false statement need not be *material* to the case. It is not limited to evidence before a Court of Justice, but covers any statement made, under oath or otherwise, in pursuance of a legal duty to make it. A person is not bound to tell the truth when questioned by a police-officer under s. 161 (2) of the Criminal Procedure Code. A false allegation in a written statement amounts to this offence. Illegality of a trial does not purge perjury committed in that trial. An accused is not liable if he gives false answers to questions put by the Court. The English law requires two witnesses to prove perjury, but the Indian law does not.

A person is said to 'fabricate false evidence' if he

- Fabricating false evidence.*
- (1) causes any circumstances to exist, or
 - (2) makes any false entry in any book or record,
- or
- (3) makes any document containing a false statement,
 - (4) intending that such *circumstance, false entry or false statement* may appear in evidence in (a) a judicial proceeding, or (b) a proceeding taken by law before a public servant or an arbitrator, and
 - (5) may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion.

(6) touching any point material to the result of such proceeding

(s. 192). [If evidence is given or fabricated for the purpose of being used in any stage of a judicial proceeding, 7 years and fine; in any other case, 3 years and fine (s. 193).]

This section refers to judicial proceedings. Section 181 refers to any proceeding before a public servant. The definition of 'judicial proceeding' in the Criminal Procedure Code is not applicable to ss. 192 and 193.

Intention is the gist of the offence of fabricating false evidence.

The false evidence must be *material* to the case, though it may not be so under s. 191. If no erroneous opinion could be formed touching any point material to the result of a proceeding there is no fabrication.

As soon as the false evidence is *fabricated* the offence is complete. Actual *use* of such evidence is not necessary. Such use is punishable under s. 196. The fabricated evidence must, however, be admissible evidence. The offence cannot be committed before a public servant not authorized to hold an investigation.

Where a person makes two contradictory statements he can be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of those contradictory statements is false.

Persons accused of giving or fabricating false evidence should be tried separately and *not* jointly.

An accused person who fabricates evidence to escape punishment is not liable under this section, unless he contemplates injury to someone else.

The aggravated forms of these two offences are—

1. Giving or fabricating false evidence with intent to produce conviction of a capital offence (s. 194).
2. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment (s. 195).

The following offences are punishable in the same manner as the giving of false evidence : —

1. Issuing or signing any certificate required by law to be given or signed or by law made evidence of any fact knowing or believing that such certificate is false in any material point (s. 197).
2. Using as true a certificate known to be false in a material point (s. 198).
3. False statement made in any declaration which touches any material point and which is by law receivable as evidence (s. 199).
4. Using as true any such declaration known to be false in any material point (s. 200).

Destruction or secretion or obliteration of a document to prevent its production in evidence in a Court is punishable (s. 204).

There are two offences in this Chapter dealing with false personation.—

1. **Falsely personating another, and in such assumed character making any admission or statement, or confessing judgment or causing any process to be issued or**

Personation.

becoming bail or security, or doing any other act in any suit or prosecution (s. 205).

Any fraudulent gain or benefit to the offender is not necessary.

The Calcutta High Court has held that a person commits this offence even if he personates a purely imaginary person. The Madras High Court, following English precedents, has held to the contrary.

2. Personating a juror or assessor (s. 229).

The following provisions deal with the abuse of process of Court :—

1. Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree (s. 206).

2. Fraudulent claim to property to prevent its seizure as forfeiture or in execution (s. 207).

3. Fraudulently suffering a decree for a sum not due (s. 208).

4. Fraudulently or dishonestly making a false claim in Court (s. 209).

5. Fraudulently obtaining a decree for a sum not due or causing a decree or order to be executed against any person after it has been satisfied (s. 210).

The fact that the satisfaction of a decree is of such a nature that the Court executing the decree cannot recognize it, does not prevent the decree-holder from being convicted of this offence.

6. False charge of an offence.

This has four ingredients :—

(1) Instituting or causing to be instituted any criminal proceedings,

or

(2) falsely charging any person with having committed an offence.

(3) Knowledge that there is no just or lawful ground for it.

(4) Doing as above with intent to cause injury to any person (s. 211).

[2 years, or fine, or both. If criminal proceedings be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, then the punishment is 7 years and fine].

Criminal law may be put in motion—

(1) by giving information to the police, or

(2) by lodging a complaint before a Magistrate.

A false charge to the police in respect of a *cognizable* offence amounts to institution of criminal proceedings. But as the police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence made to the police is not an institution of criminal proceedings but merely a false charge. No such distinction exists when a false charge of any offence is made before a Magistrate.

Leading cases :— R. v. Karim Buksh.

R. v. Jijibhai.

For a false charge of offences of a serious nature severe punishment is provided. According to the Calcutta and the Madras High Courts, in such cases it is not necessary that criminal proceedings should be instituted,

the charge should merely relate to a serious offence; whereas the Allahabad High Court has held that criminal proceedings should have been actually instituted.

Leading cases :— **R. v. Karim Buksh** (Cal).

R. v. Nanjunda Row (Mad).

R. v. Bisheshar (All).

The bringing of a vexatious charge is not an offence under this section. The compounding of the offence alleged to have been committed is no bar to a prosecution under this section. The person aggrieved may sue in a civil Court for damages for malicious prosecution instead of instituting criminal proceedings.

There is a difference between s. 182 and s. 211.

Bombay High Court.—Under s. 182 proof of (1) malice, and (2) want of reasonable and probable cause, except so far as they are implied in the act of giving false information, is not necessary; under s. 211 such proof is absolutely required (*Raghavendra v. Kashinathbhat*).

Calcutta High Court.—Prosecution for a false charge may be under either of these sections. But if the false charge is of a *serious* nature, s. 211 should be applied (*Sarada Prosad Chatterjee*).

Allahabad High Court.—Where a specific false charge is made, the proper section to apply is s. 211. An offence under s. 182 is complete when false information is given to a public servant although the latter takes no steps towards the institution of criminal proceedings (*Jugal Kishore; Raghu Tiwari*).

Patna High Court. It follows the view of the Calcutta High Court.

Punjab.—The former Chief Court of the Punjab followed the view of the Bombay High Court.

Screening an offender. 1. Causing disappearance of evidence of an offence or giving false information to screen the offender (s. 201).

An offence should have been actually committed to render a person liable. But an offender himself causing the disappearance of evidence is not liable. He cannot be convicted of abetment as well.

2. Taking gift to screen an offender from punishment (s. 213).

3. Offering gift or restoration of property in consideration of screening an offender (s. 214).

Taking any gratification on account of helping any person to recover any movable property of which he has been deprived by any offence under this Code is punished unless the person taking gift uses all means in his power to cause the offender to be apprehended (s. 215).

1. Harboursing or concealing a person knowing him to be an offender with the intention of screening him from legal punishment (s. 212).

2. Harboursing or concealing an offender who has escaped from custody, or whose apprehension has been ordered (s. 216).

3. Knowingly harboursing any persons who are about to commit, or have committed, robbery or dacoity (s. 216A).

Offences by public servants.

The following provisions deal with offences against public justice committed by public servants:—

1. Public servant knowingly disobeying a direction of law with intent to save any person from punishment or any property from forfeiture (s. 217).

2. Public servant, charged as such with the preparation of a record or other writing, framing it incorrectly with intent to cause loss or injury to the public or any person, or to save any person from punishment or property from forfeiture (s. 218).

3. Public servant in a judicial proceeding corruptly or maliciously making any report, order, verdict, or decision, knowing that it is contrary to law (s. 219).

4. Public servant corruptly or maliciously committing any person for trial, or keeping any person in confinement knowing that he is acting contrary to law (s. 220).

5. Public servant intentionally omitting to apprehend, or suffering to escape, any person when legally bound to apprehend or keep him in confinement (s. 221).

6. Same as above, when such person is under sentence or lawfully committed to custody (s. 222).

7. Public servant legally bound to keep in confinement a person charged with, or convicted of, any offence, negligently suffering him to escape (s. 223).

8. Public servant omitting to apprehend or suffering to escape from confinement any person in cases not otherwise provided for (s. 225A).

Resisting the law is punishable in the following cases:—

1. A person resisting or obstructing the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted; or escaping or attempting to escape from legal custody (s. 224).

2. Resisting or obstructing lawful apprehension of another person for an offence, or rescuing or attempting to rescue him from legal custody (s. 225).

3. Resistance or obstruction to lawful apprehension, or escaping or rescuing from legal custody in cases not otherwise provided for (s. 225B).

There are two sections dealing with transgression of punishment.

1. Unlawful return from transportation (s. 226).

2. Violation of condition of remission of punishment (s. 227).

A person is guilty of contempt of Court if he intentionally offers any insult or causes any interruption to any public servant, while he is sitting in any stage of a judicial proceeding (s. 228). [6 months' simple imprisonment, or Rs. 1,000, or both.]

Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign

power in order to be so used. Old coins not used as money are not coins under this definition.

King's coin is

(1) metal stamped and issued

(a) by the authority of the King,

(b) by the authority of the Central Government or Government of any Province, or any Government in the King's dominions in order to be used as money;

(2) metal which has been so stamped or issued shall continue to be King's coin notwithstanding that it may have ceased to be used as money (s. 230).

• Following are the various offences relating to coin:—

1. Counterfeiting coin or King's coin (ss. 231, 232).

2. Making, mending, buying, selling, or disposing of any die or instrument for counterfeiting coin or King's coin (ss. 233, 234).

• 3. Being in possession of any instrument or a material for the purpose of using the same for counterfeiting coin or King's coin (s. 235).

4. Abetting in India, counterfeiting of coin out of India (s. 236).

Abetment in British India must be complete.

5. Importing or exporting of a counterfeit coin or King's coin, (ss. 237, 238).

6. Delivery to another of a coin or King's coin possessed with the knowledge that it is counterfeit (ss. 236, 240).

7. Delivery to another of a coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit (s. 241).

8. Possession of a counterfeit coin or King's coin by a person who knew it to be counterfeit when he became possessed thereof (ss. 242, 243).

Possession must be with intent to defraud.

9. Any person employed in a mint causing a coin to be of a different weight or composition from that fixed by law (s. 244).

10. Unlawfully taking from a mint any coming instrument or tool (s. 245).

11. Fraudulently or dishonestly diminishing the weight or altering the composition of any coin or King's coin (ss. 246, 247).

12. Altering appearance of any coin or King's coin with intent that it shall pass as a coin of different description (ss. 248, 249).

13. Delivery to another of a coin or King's coin possessed with the knowledge that it is altered (ss. 250, 251).

There must be both possession with knowledge and fraudulent delivery.

14. Possession of an altered coin or King's coin by a person who knew it to be altered when he became possessed thereof (ss. 252, 253).

15. Delivery to another of a coin as genuine, which, when first possessed, the deliverer did not know to be altered (s. 254).

The following offences relate to Government stamps:—

1. Counterfeiting or performing any part of the process of counterfeiting a Government stamp (s. 255).

2. Possession of an instrument or a material for the purpose of counterfeiting a Government stamp (s. 256).

3. Making, buying, or selling any instrument for the purpose of counterfeiting a Government stamp (s. 257).

4. Sale of a counterfeit Government stamp (s. 258).

5. Possession of a counterfeit Government stamp (s. 259).

6. Using as genuine a Government stamp known to be counterfeit (s. 260).

7. Fraudulently effacing any writing from a substance bearing a Government stamp or removing from a document the stamp used for it, with intent to cause loss to Government (s. 261).

8. Using a Government stamp known to have been before used (s. 262).

9. Fraudulently erasing from a Government stamp any mark denoting that the same has been used, or selling or disposing of a stamp from which such a mark has been erased (s. 263).

10. Possession of a fictitious stamp or of any die, plate or instrument for making any fictitious stamp (s. 263A).

Weight and measures. The following offences relate to weights and measures :—
(chap. XIII.)

1. Fraudulent use of false instruments for weighing (s. 264).

2. Fraudulent use of a false weight or measure or using any weight or measure of length or capacity, as a different weight or measure from what it is (s. 265).

3. Possession of any instrument for weighing, or of any weight or measure of length or capacity, knowing it to be false, intending that the same may be fraudulently used (s. 266).

4. Making, selling, or disposing of any false instrument for weighing or any false weight or measure of any length or capacity in order that the same may be used or is likely to be used as true (s. 267).

Nuisance. A person is guilty of public nuisance who does
(chap. XIV.)

(1) any act, or is guilty of an illegal omission, and

(2) such act or omission must cause

(a) any common injury, danger, or annoyance (i) to the public, or (ii) to the people in general who dwell or occupy property in the vicinity, or

(b) any injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right (s. 268).

Nuisance is either (1) public, or (2) private. The former is an offence against the public as it affects the public at large, or some considerable portion of them. It depends in a great measure upon the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial nature. Public nuisance cannot be excused on the ground that the act complained of is convenient to a large number of the public. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals, have always been

considered public nuisance. A brew-house, glass-house, or swine-yard, may be a public nuisance if it is shown that the trade is such as to render enjoyment of life and property uncomfortable. Public nuisance can only be the subject of one indictment, otherwise a party might be ruined by a million suits. No prescriptive right can be acquired to maintain a public nuisance.

Private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments, of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that public nuisance differs from private. Private nuisance is not a subject of indictment but a ground of an action for damages, or injunction, or both.

The following offences affect public health :—

1. Negligent or Malignant act likely to spread infection of any disease dangerous to life (ss. 269, 270).

2. Wilful disobedience to a quarantine rule (s. 271).

3. Adulteration of food or drink intended for sale so as to make it noxious (s. 272).

4. Selling, offering or exposing for sale, as food or drink, any article which has been rendered or has become noxious or unfit for food or drink (s. 273).

5. Adulteration of drug so as to lessen its efficacy, change its operation or render it noxious (s. 274).

6. Knowingly selling or causing to be used for medicinal purposes any adulterated drug (s. 275).

7. Selling, or offering or exposing for sale, or issuing from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation (s. 276).

8. Voluntarily corrupting or fouling the water of a public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used (s. 277).

9. Voluntarily vitiating the atmosphere so as to make it noxious to the public health (s. 278).

The following offences relate to public safety :—

1. Rash or negligent driving or riding on a public way so as to endanger human life, or to cause hurt or injury to any other person (s. 279).

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

In the case of rash and negligent driving it is not necessary that the act should result in an injury to life or property. Even the presence of a person on the road is not essential. The probability of persons using the road being placed in danger is alone taken into consideration.

2. Rash or negligent navigation of a vessel (s. 280).

3. Exhibiting any false light, mark, or buoy, intending or knowing it to be likely to mislead any navigator (s. 281).

4. Conveying a person by water for hire in a vessel overloaded or unsafe (s. 282).

5. Causing danger, obstruction, or injury to any person in a public way or public line of navigation (s. 283).

6. Rash or negligent conduct with respect to any poisonous substance so as to endanger human life, or to be likely to cause hurt or injury to any person (s. 284).

7. Rash or negligent conduct with respect to any fire or combustible matter (s. 285).

8. Rash or negligent conduct with respect to any explosive substance (s. 286).

9. Rash or negligent conduct with respect to any machinery in the possession or under the charge of the offender (s. 287).

10. Negligence with respect to pulling down or repairing buildings (s. 288).

11. Negligence with respect to any animal (s. 289).

Acts of public nuisance other than those mentioned are punishable under the general section (s. 290). A person cannot continue a public nuisance after injunction to discontinue (s. 291).

Offences against public morals and decency are :—

1. (a) Selling, letting to hire, distributing, or publicly exhibiting or circulating any obscene book, pamphlet, paper, drawing, painting, representation or figure or any obscene object; or
- (b) importing, exporting, or conveying any obscene object for any of the above purposes; or
- (c) taking part in or receiving profits from any business conducted for the above-mentioned purposes; or
- (d) advertising that any person is engaged in any of the above mentioned acts, or that any obscene object can be got from that person; or
- (e) attempting to do any act which is an offence under this section (s. 292).

2. Selling, letting to hire, distributing, exhibiting, or circulating to any person under the age of twenty years any obscene object referred to above, or attempting to do so (s. 293).

3. Causing annoyance to others by—

- (a) doing any obscene act in any public place; or
- (b) singing, reciting, or uttering any obscene song, ballad or words, in or near any public place (s. 294).

4. Keeping any office, or place, for the purpose of drawing any lottery not being a State lottery or lottery authorised by the Provincial Government (s. 294A).

Whoever publishes any proposal to pay any sum, or to deliver any goods, or drawing of any ticket, lot or number, in a lottery is also punished (*ibid*). [Fine up to Rs. 100].

An agreement for contributions to be paid by lot, or a transaction requiring skill for winning prizes is not a lottery. Transactions in which prizes are decided by chance amount to lottery.

Offences relating to religion. Chap. XV.

Chapter XV treats of offences relating to religion.

They are as follows :—

1. Injuring or defiling a place of worship, or any object held sacred by any class of persons, with intent to insult the religion of any class of person (s. 295).

2. Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious belief (s. 295A).

3. Voluntarily disturbing a religious assembly lawfully engaged in the performance of religious worship or religious ceremonies (s. 296).

4. Trespassing in a place of worship or burial-place, offering any indignity to a corpse, or disturbing persons performing funeral ceremonies, with intent to wound the feelings, or insult the religion of any person or with the knowledge that the feelings of any person are likely to be wounded (s. 297).

5. Uttering any word or making any sound in the hearing of that person, or making any gesture in the sight of that person, or placing any object in the sight of that person (s. 298).

Offences against the person are—

Offences affecting human body. Chap. XVI.	(1) Unlawful homicide	(5) Wrongful confinement.
		(6) Criminal force.
(a) Culpable homicide.		(7) Assault.
(b) Murder.		(8) Kidnapping.
(c) Homicide by rash or negligent act.		(9) Abduction.
(2) Causing miscarriage.		(10) Slavery.
(3) Hurt and grievous hurt.		(11) Forced labour.
(4) Wrongful restraint.		(12) Rape.
		(13) Unnatural offence.

Culpable homicide, the genus, and murder, the species, are defined in very closely resembling terms.

A person commits culpable homicide (s. 299) if he causes death by doing an act—

(1) with the intention of causing death; or

(2) with the intention of causing such bodily injury as is likely to cause death; or

A person commits murder (s. 300) if he causes death by doing an act

(1) with the intention of causing death; or

(2) with the intention of causing such bodily injury as the offender *knows to be likely* to cause death of the person to whom the harm is caused; or

(3) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is *sufficient in the ordinary course of nature* to cause death; or

(3) with the knowledge that he is *likely* by such act to cause death.

(4) with the knowledge that it is so *imminently dangerous* that it must in *all probability* cause death, or such bodily injury as is likely to cause death.

[Transportation for life; or ten years and fine, if the offence comes under cl. 2. If it comes under cl. 3. then 10 years, or fine, or both—(s. 304)].

[Capital punishment, or transportation for life, and fine—(s. 302). Murder by a life convict is punishable with capital punishment.—(s. 303)].

An offence cannot amount to murder unless it falls within the definition of culpable homicide; but it may amount to culpable homicide without amounting to murder. All acts of killing done with the intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the most probable result are *prima facie* murder; while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Where the act is not done "with the intention of causing death" (cl. 4, s. 300) the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue. It is culpable homicide where death must have been *known* to be a *probable* result. It is murder where it must have been *known* to be the *most probable* result.

Leading cases :— R. v. Govinda.

R. v. Gora Chand Gopee.

R. v. Idu Beg.

Death caused by the effect of words on the imagination or the passions of a person amounts to culpable homicide. If a person engaged in the commission of an offence causes death by pure accident he shall suffer only the punishment provided for the offence, without any addition on account of the accidental death. Culpable homicide presupposes an intention, or knowledge of likelihood, of causing death. In the absence of these elements, even if death be caused, the offence will be that of hurt or grievous hurt, e.g., death caused by kicking a person suffering from a diseased spleen.

A person who causes bodily injury to another who is labouring under a disease or bodily infirmity, and thereby accelerates the death of that other is guilty of homicide (Expln. 1). Similarly, where death is caused by bodily injury, the person who causes such injury is guilty of this offence, although by resorting to proper remedies and skilful treatment death might have been prevented (Expln. 2). The causing of the death of a child in the mother's womb is not homicide. But it is homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born (Expln. 3).

If death is caused by the voluntary act of the deceased resulting from fear of violence on the part of the offender, the offence will be murder. For instance, if four or five persons were to stand round a man, and

so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, the person threatening him will be guilty of murder.

There is no difference in the liability of the offender if the injury intended for one falls on another by accident (s. 301).

Culpable homicide is not murder in the following
Exceptions. cases :—

1. Grave and sudden provocation depriving the offender of the power of self-control, provided that the provocation is not—

- Provocation.
- (a) sought or voluntarily provoked by the offender as an excuse;
 - (b) given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers;
 - (c) given by anything done in the lawful exercise of the right of private defence.

Provocation resulting from abusive language has been considered to be grave enough. Female infidelity is a common cause of provocation.

2. If the offender, in the exercise in good faith of the right of private defence of person or property, exceeds it, and causes death without premeditation and without intending more harm than is necessary.

3. If the offender being a public servant or aiding a public servant exceeds his legal powers and causes death by an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty, and without ill-will towards the deceased.

4. If it is committed, without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

The fight should not have been pre-arranged.

5. When the deceased, being above the age of eighteen years, suffers death or takes the risk of harm with his own consent.

Causing the death of any person by doing any rash or negligent act not amounting to culpable homicide is punishable (s. 304A). [2 years and fine].

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, or knowledge that injury will probably be caused.

Criminal negligence is acting without the consciousness that the illegal and mischievous effect will follow but in circumstances which show that the actor has not exercised the caution incumbent upon him and that if he had he would have had the consciousness.

If death results from injury *intentionally* inflicted this section does not apply. Death should have been the direct result of the rash and negligent act and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough if it is *causa sine qua non*.

Leading cases :— R. v. Nidamarti Nagabhushanam.

R. v. Ketabdi Mundul.

There are two provisions regarding abetment of suicide :—

(1) Abetment of suicide of a child or an idiot or an insane or a delirious or an intoxicated person (s. 305).

(2) Abetment of suicide by any person (s. 306).

Attempts.

Attempts to destroy life are of three kinds :—

1. Attempt to murder—i.e., doing an act with such intention or knowledge, and under such circumstances that if the doer by that act caused death he would be guilty of murder (s. 307). [10 years and fine. If hurt is caused, then transportation for life or ten years. If the offender is under sentence of transportation, then death.]

The Bombay High Court has held that there may be an attempt under s. 511 which does not come under this section. It is not intended to exhaust all attempts to commit murder which should be punished under the Code (R. v. Cassidy). But the Allahabad High Court has laid down that s. 511 does not apply to attempts to commit murder which are fully and exclusively provided for by this section (R. v. Niddha).

2. Attempt to commit culpable homicide, i.e., doing an act with such intention or knowledge, and under such circumstances, that, if the doer by that act caused death, he would be guilty of culpable homicide not amounting to murder (s. 308). [If hurt is caused, then 7 years, or fine, or both; in other cases 3 years, or fine, or both].

3. Attempt to commit suicide—An act towards the commission of this offence should have been done (s. 309). [1 year, or fine, or both]. The act must have been done in the course of the attempt, otherwise no offence is committed.

Thug.

A 'thug' is a person who has been

(1) habitually associated with any other or others for the purpose of committing—

(a) robbery, or

(b) child stealing,

(2) by means of, or accompanied with, murder (s. 310). [Transportation for life and fine (s. 311)].

Miscarriage, exposure of children, etc.

The following offences relate to birth and exposure of children :—

1. Voluntarily causing a woman with child or quick with child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman (s. 312) and without her consent (s. 313).

2. Causing the death of a woman by an act done with intent to cause miscarriage (s. 314).

5. Wrongful confinement for the purpose of extorting any property or valuable security, or constraining person to do anything illegal or to give any information which may facilitate the commission of an offence (s. 347).

6. Wrongful confinement for the purpose of extorting confession or information which may lead to the detection of an offence, or compelling restoration of any property or valuable security or the satisfaction of any claim or demand (s. 348).

A person is said to use force to another,

Force (1) If he causes motion, change of motion, or cessation of motion to that other, or

(2) if he causes to any substance such motion, or change of motion or cessation of motion as brings that substance into contact (a) with any part of that other's body, or (b) with anything which that other is wearing or carrying, or (c) with anything so situated that such contact affects that other's sense of feeling; provided that he does so in any of the three following ways :-

(i) By his own bodily power.

(ii) By disposing any substance in such a manner that the motion or change of motion, or cessation of motion, takes place without any further act on his part, or on the part of any other person.

(iii) By inducing any animal to move, to change its motion, or to cease to move (s. 349).

A person uses 'criminal force' to another if

Criminal force. (1) he intentionally uses force to any person,

(2) without that person's consent,

(3) in order to the committing of any offence, or

(4) intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used (s. 350). [3 months, or Rs. 500, or both].

Assault.

A person commits an 'assault', if he

(1) makes any gesture, or any preparation,

(2) intending or knowing it to be likely,

(3) that such gesture or preparation will cause any person present to apprehend

(4) that he is about to use criminal force to that person (s. 351). [3 months, Rs. 500, or both (s. 352)].

An assault is something less than the use of criminal force, the force being cut short before the blow actually falls. An assault is included in every use of criminal force. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault (**Expln.**).

Assault or criminal force on grave provocation is not severely punishable. [1 month, or Rs. 200 fine, or both (s. 358)]. The provocation should not be voluntarily sought, or it should not have been given by

anything done in obedience to the law or done by a public servant in the lawful exercise of his powers, or done in the lawful exercise of the right of private defence.

Leading cases :—*Carna v. Morgan.*

Stephen v. Myres.

An assault differs from an 'affray'—

(1) An 'assault' may take place anywhere, whereas an 'affray' must be committed in a public place.

(2) An 'assault' is regarded as an offence against the person of an individual, whereas an 'affray' is regarded as an offence against the public peace.

The following are aggravated forms of the offence of 'assault' and 'use of criminal force' :—

1. Assaulting or using criminal force to deter a public servant from the discharge of his duty (s. 353).

2. Assaulting or using criminal force to a woman with intent to outrage her modesty (s. 354).

3. Assaulting or using criminal force with intent to dishonour a person, otherwise than on grave provocation (s. 355).

4. Assaulting or using criminal force in attempting to commit theft of property carried by a person (s. 356).

5. Assaulting or using criminal force to any person, in attempting wrongfully to confine that person (s. 357).

Kidnapping. Kidnapping is of two kinds:

(I) Kidnapping from British India, and

(II) Kidnapping from lawful guardianship (s. 359) [7 years and fine].

I. Whoever

(1) conveys any person beyond the limits of British India

(2) without the consent (a) of that person, or (b) of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India (s. 360).

II. Whoever (a) takes, or (b) entices

(1) any minor (a) under fourteen years of age, if a male, or (b) under sixteen years of age, if a female, or

(2) any person of unsound mind,

(3) out of the keeping of the lawful guardianship of such minor or person or unsound mind,

(4) without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship (s. 361).

These sections protect children of tender age from being kidnapped or seduced for immoral purposes, as well as protect the rights of parents and guardians having the custody of minor or insane persons.

The person kidnapped must be *taken* out of the possession of the parent by any means, forcible or otherwise : and the consent of the person kidnapped does not lessen the offence.

The offence of kidnapping is complete when the minor is actually taken from lawful guardianship (*R. v. Nemai Chatteraj*; *R. v. Ram Dei*;

Nanhak Sao v. King-Emperor). Kidnapping from guardianship is not a continuing offence.

It is no defence that the accused did not know that the person kidnapped was under sixteen or believed that she had no guardian. Any one dealing with such person does so at his peril. The period of detention is immaterial.

Abducting.

A person is said to 'abduct' another if he

- (1) by force compels, or
- (2) by any deceitful means induces,
- (3) any person to go from any place (s. 362).

'Abduction' differs from 'kidnapping'—

(1) In 'abduction' the removal of the person need not be from the protection of the lawful guardianship.

(2) The element of force or fraud existing in 'abduction' is absent in kidnapping.

(3) In 'abduction' the age of the person abducted is immaterial, in 'kidnapping', the person must be under fourteen, if a male, and under sixteen, if a female.

(4) Abduction is a continuing offence. Kidnapping is not a continuing offence.

The following are aggravated forms of the offence of 'kidnapping' or 'abducting' :—

1. Kidnapping or abducting in order to murder (s. 364).
2. Kidnapping or abducting with intent secretly and wrongfully to confine a person (s. 365).
3. Kidnapping or abducting a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse (s. 366).
4. Inducing a woman to go from any place, by means of criminal intimidation or abuse of authority or any method of compulsion, in order that she may be forced or seduced to illicit intercourse (*ibid*).
5. Inducing a minor girl under the age of eighteen years to go from any place or to do any act with the intention or knowledge that she will be forced or seduced to illicit intercourse (s. 366A).
6. Importing a girl under twenty one years of age from a foreign country or an Indian State with intent or knowledge that she will be forced or seduced to illicit intercourse (s. 366B).
7. Kidnapping in order to subject a person to grievous hurt, slavery, or unnatural lust (s. 367).
8. Wrongfully concealing or confining a kidnapped or abducted person (s. 368).
9. Kidnapping or abducting a child under ten years with intent to steal movable property from the person of such child (s. 369).

Slavery

Two provisions deal with slavery.—

1. (a) Importing, exporting, removing, buying, selling, or disposing of any person as a slave, or
- (b) accepting, receiving, or detaining against his will any person as a slave (s. 370).

There must be a selling or disposal of a person 'as a slave', that is, a selling or disposal whereby one who claims to have a property in the person as a slave, transfers that property to another. Lawful contracts for the transfer of a child by its parents do not amount to this offence, e.g., giving a child in adoption, buying girls for marriage, etc.

2. Habitually importing, exporting, removing, buying, selling, trafficking or dealing in slaves (s. 371).

Two provisions relate to selling or buying of persons under eighteen years of age for immoral purposes :—

Sale of minors for immoral purposes.

1. Selling, letting to hire, or otherwise disposing of any person under the age of eighteen years for the purpose of (a) prostitution, or (b) illicit intercourse, or (c) for any unlawful and immoral purpose, or (d) knowing it to be likely that such person will at any age be used for such purpose (s. 372).

2. Buying, hiring, or otherwise obtaining possession of such person for a like purpose (s. 373).

When a girl under eighteen years is disposed of to, or is obtained possession of by, a prostitute or a brothel keeper, the person disposing of, or obtaining possession of such girl shall be presumed to have disposed of her, or obtained possession of her, for prostitution (Explan. 1, ss. 372 and 373).

"Illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation (Explan. 2, ss. 372 and 373).

Unlawful labour. Unlawfully compelling any person to labour against his will [1 year, or fine, or both (s. 374).]

Rape. A man is said to commit 'rape' who has sexual intercourse with a woman

(1) against her will; or
(2) without her consent; or
(3) with her consent when her consent has been obtained by putting her in fear of death or of hurt; or

(4) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is lawfully married; or

(5) with or without her consent when she is under fourteen years of age (s. 375). [Transportation for life, or ten years' imprisonment and fine (s. 376).]

Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape (Explan.).

Sexual intercourse by a man with his own wife, the wife not being under thirteen years, is not rape (Excep.)

Indecent assault upon a woman does not amount to an 'attempt' to commit rape unless the Court is satisfied that the accused was determined to gratify his passions at all events, and in spite of all resistance.

Unnatural offence is having (1) carnal intercourse, (2) against the order of nature, (3) with any man, woman or animal (s. 377).

Offences against property. Chap. XVII.

The following are the offences against property dealt with in Chapter XVII :—

- | | |
|--------------------------------------|-----------------------------|
| 1. Theft. | of property. |
| 2. Extortion. | 8. Mischief. |
| 3. Robbery. | 9. Criminal trespass. |
| 4. Dacoity. | (a) House-trespass. |
| 5. Receiving stolen property. | (b) Lurking house-trespass. |
| 6. Cheating. | (c) House-breaking. |
| 7. Fraudulent deeds and dispositions | (d) Lurking house-breaking. |

The above offences may be grouped in three classes :—

- (1) Offences dealing with deprivation of property (ss. 378-424).
- (2) Offences dealing with injury to property (ss. 425-440).
- (3) Offences dealing with violation of rights of property in order to the commission of some other offence (ss. 441-462).

A person is said to commit theft who

- Thft. .
- (1) intending to take dishonestly
 - (2) any movable property
 - (3) out of the possession of any person
 - (4) without that person's consent,
 - (5) moves that property, in order to such taking (s. 378). [3 years, or fine, or both (s. 379)].

A thing attached to the earth can be the subject of theft when separated from the earth. A person moving an obstacle which prevented a thing from moving is said to cause it to move. A person causing an animal to move is said to move whatever is thereby moved by the animal. The owner's consent may be express or implied (Explns).

The intention to take dishonestly must exist at the time of the moving of the property. If the act is not done *animo furandi*, it will not amount to theft. The test is : Is the taking warranted by law ? It is not necessary that the taking should be of a permanent character, or that the accused should have derived any profit. Property removed in the assertion of a contested claim does not constitute theft. A *bona fide* claim of right rebuts the presumption of dishonesty. But a creditor removing a debtor's property to enforce payment is liable. A person taking dishonestly his own property out of the possession of another is guilty of this offence. Thus the person from whose possession the property is taken may not be the owner. If one of the joint owners takes exclusive possession of joint property dishonestly he would be guilty of theft. The least removal of the thing from its place is sufficient for the offence. It does not matter whether the property remains within its owner's reach or not.

Leading cases.:—*R. v. Nagappa.*

R v. Shri Churn Chungo.

The following are aggravated forms of the offence :—

1. Theft in any building, tent, or vessel, used as a human dwelling or for the custody of property (s. 380).

2. Theft by a clerk or a servant, of property in possession of his master (s. 381).

3. Theft after preparation made for causing death, hurt, or restraint, or fear of death, hurt, or restraint to any person, in order to the committing of such theft or the effecting of such escape afterwards, or the retaining of property taken by such theft (s. 382).

A person commits 'extortion' if he

Extortion. (1) intentionally puts any person in fear of any injury

(a) to that person, or

(b) to any other, and thereby

(2) dishonestly induces the person so put in fear

(3) to deliver to any person any

(a) property, or

(b) valuable security, or

(c) anything signed or sealed, which may be converted into a valuable security (s. 383). [3 years, or fine, or both (s. 384)]. Putting any person in fear of injury in order to commit extortion [2 years, or fine, or both (s. 385)].

The inducement to part with the property should be dishonest, i.e., with intent to cause wrongful gain or loss.

The 'fear' in extortion must be such as to unsettle the mind of the person on whom it operates and to take away from his acts that element of free voluntary action which alone constitutes consent. The terror of a criminal charge or of a loss of an appointment amounts to a fear of injury. 'Fear' must precede the delivery of property. Thus wrongful retention of property obtained without threat will not amount to extortion, even though subsequent threats are used to retain it.

'Theft' differs from 'extortion' :—

(1) In 'theft' the property is taken without the owner's consent; in 'extortion' the consent is obtained by putting a person in fear of any injury to him or any other.

(2) 'Theft' can only be committed of movable property; 'extortion' may be committed of immovable property as well.

The following are aggravated forms of extortion :—

1. Extortion by putting a person in fear of death, or grievous hurt to that person or to any other (s. 386).

2. Putting or attempting to put any person in fear of death, or grievous hurt to himself or any other in order to commit extortion (s. 387).

3. Extortion by threat of accusation of an offence, punishable with death or transportation for life, or ten years' imprisonment, or of having attempted to induce any other person to commit such offence (s. 388).

4. Putting or attempting to put any person in fear of such accusation as is mentioned above in order to commit extortion (s. 389).

'Robbery' is an aggravated form of either theft or extortion. In all

Robbery. 'robbery' there is either theft or extortion.

Theft is 'robbery' if—

(1) in order to, the committing of the theft, or in committing the theft, or

(2) in carrying away, or attempting to carry away, property obtained by the theft,

(3) the offender, for that end, voluntarily causes, or attempts to cause, to any person

(a) death, hurt, or wrongful restraint, or

(b) fear of instant death, instant hurt, or instant wrongful restraint.

Extortion is 'robbery' if the offender, at the time of committing the extortion, is

(1) in the presence of the person put in fear, and

(2) commits the extortion by putting that person in fear of instant death, instant hurt, or instant wrongful restraint to that person, or to some other person, and

(3) by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted (s. 390). [10 years and fine. If the robbery is committed on the highway between sunset and sunrise, then 14 years (s. 392). Attempt, 7 years and fine (s. 393). If hurt is caused, transportation for life, or 10 years and fine (s. 394).] The offender is said to be *present* if he is near enough to put the other in fear.

An accidental injury by a thief will not convert his offence into robbery. Similarly, if hurt is caused to avoid capture, the offence will not amount to robbery, e.g., throwing stones to avoid pursuit.

Belonging to a wandering gang of persons associated for the purpose of habitually committing theft or robbery is made punishable (s. 401).

When (1) five or more persons conjointly commit, or attempt to commit, a robbery, or

(2) where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt amount to five or more,

every person so committing, attempting or aiding, is said to commit 'dacoity' (s. 391). [Transportation for life or ten years (s. 395).]

If any one of the dacoits commit murder in committing dacoity, every one of them shall be punished with death, or transportation for life, or rigorous imprisonment extending to ten years and fine (s. 396). It does not matter whether a particular dacoit was inside the house where the dacoity was committed, or outside the house, so long as the murder is committed in the commission of the dacoity. It is not necessary that the murder should be committed in the presence of all.

Preparation to commit dacoity is punishable (s. 399), and so is either belonging to a gang of dacoits (s. 400), or assembling for the purpose of committing dacoity (s. 402).

Aggravated forms of robbery and dacoity are—

(1) Offender using any deadly weapon at the time of committing robbery or dacoity or causing or attempting to cause death or grievous hurt to any person (s. 397).

This section only applies to the offender who actually uses a deadly weapon, or causes grievous hurt.

(2) Attempt to commit robbery or dacoity when armed with a deadly weapon (s. 398).

A person commits 'criminal misappropriation' if he

(1) dishonestly misappropriates or converts to his own use

(2) any movable property (s. 403). [2 years, or fine, or both].

The offence is committed though the misappropriation be only temporary. The finder of property is not guilty if he takes it to protect it or to find the owner; but he is guilty, if he appropriates it knowing the owner, or having the means of discovering him, or before using reasonable means to discover him, or not believing it to be his own property, or not believing in good faith that the owner cannot be found (Explns. 1 and 2).

This offence takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. Thus retention of money by a servant authorized to collect it from a person may be criminal misappropriation even though he retains it on account of wages due to him.

A person retaining money paid by mistake will be guilty of criminal misappropriation. But there can be no criminal misappropriation of things which have actually been abandoned.

Leading cases:—*Bhagiram v. Abar Dome.*

R. v Sita.

Romesh Chunder v. Hiru Mondal.

'Theft' is distinguished from 'criminal misappropriation'—

(1) In 'theft' the property is taken out of the possession of another person and the offence is complete as soon as the offender moves the property. In 'criminal misappropriation' there is no invasion of another's possession. The property is often innocently got into possession.

(2) In 'theft' the dishonest intention must precede the act of taking; in 'criminal misappropriation' it is the subsequent intention to convert or misappropriate the property that constitutes the offence.

There is a difference between 'criminal misappropriation' and 'cheating.' In 'criminal misappropriation' as in 'criminal breach of trust,' the original reception of property is legal, the dishonest conversion takes place subsequently. In 'cheating' deception is practised to get possession of the thing.

The aggravated form of criminal misappropriation is dishonest misappropriation of property possessed by a deceased person at the time of his death (s. 404).

Criminal breach of trust. A person commits 'criminal breach of trust,' if he

- (1) being in any manner entrusted with (a) property, or (b) any dominion over property,
- (2) dishonestly (a) misappropriates, or (b) converts to his own use, that property, or
- (3) dishonestly (a) uses, or (b) disposes of, that property,
- (4) in violation (a) of any direction of law prescribing the mode in which such trust is to be discharged, or (b) of any legal contract, express or implied, which he has made touching the discharge of such trust, or
- (5) wilfully suffers any other person so to do (s. 405) [3 years, or fine, or both (s. 406)].

'Criminal misappropriation' differs from 'criminal breach of trust'—

(1). In the former the property comes into the possession of the offender by some casualty, and he afterwards misappropriates it; in the latter the offender is lawfully entrusted with property and he dishonestly misappropriates it or wilfully suffers any other person to do so.

(2) 'Criminal breach of trust' only applies to conversion of property held by a person in a fiduciary capacity; 'criminal misappropriation,' to property coming into possession of the offender anyhow.

The following are aggravated forms of criminal breach of trust :—

1. Criminal breach of trust by a carrier, wharfinger, or warehouse-keeper (s. 407).

2. Criminal breach of trust by a clerk or servant (s. 408).

3. Criminal breach of trust by a public servant, banker, merchant, factor, broker, attorney or agent (s. 409).

Stolen property.

'Stolen property' is—

(1) property the possession whereof has been transferred by (a) theft, (b) extortion, or (c) robbery;

(2) property criminally misappropriated;

(3) property in respect of which criminal breach of trust has been committed.

It is immaterial whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it ceases to be stolen property (s. 410). [Receiving or obtaining stolen property knowing it to be such is punishable with 3 years, or fine, or both (s. 411)]. This section does not apply to the actual thief.

If stolen goods are restored to the possession of the owner and he returns them to the thief for the purpose of enabling him to sell them to a third person, they are no longer stolen goods; and the third person cannot be convicted of receiving them although he received them knowing them to be stolen.

'Dishonest retention' of property is distinguished from 'dishonest reception' of it. In the former offence the dishonesty supervenes after the act of acquisition of possession, while in the latter dishonesty is contemporaneous with such act. Thus a person cannot be convicted of

'receiving' if he has no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was stolen. Neither the thief, nor the receiver of stolen property, commits the offence of retaining such property dishonestly merely by continuing to keep possession of it.

Property into or for which the stolen property has been converted or exchanged is not stolen property, e.g., proceeds of a stolen cheque, or the change given for a stolen currency-note.

Res nullius cannot be the subject of receiving, e.g., a bull let loose as a part of religious ceremony and belonging to no one is not the subject of theft.

If articles belonging to different persons are received at one time, the conviction will be only for one act of receiving and not separate convictions.

The following are aggravated forms of this offence :—

1. Dishonestly receiving property stolen in the commission of a dacoity (s. 412).

2. Habitually dealing in stolen property (s. 413).

3. Voluntarily assisting in concealing or disposing of, or making away with, stolen property (s. 414).

Cheating.

A person is said to 'cheat' if he

(1) by deceiving any person,

(2) fraudulently or dishonestly induces the person so deceived

(3) to deliver any property to any person, or

(4) to consent that any person shall retain any property, or

(5) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which

(6) act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property (s. 415).

Dishonest concealment of facts is a deception (Expln.)

[1 year, or fine, or both (s. 416)].

Like 'extortion,' cheating is committed by the wrongful obtaining of a consent. The difference is that, in the former the consent is obtained by intimidation, in the latter, by deception.

'Cheating' also differs from 'theft'—

(1) In the former the property obtained by deception may be movable or immovable, in the latter, it must be movable.

(2) In 'theft' the property is taken without the consent of the owner, in 'cheating,' the owner's consent is obtained by deception.

It is not necessary that cheating should be committed in express words if it can be inferred from all the circumstances attending the obtaining of property. But it is necessary that a person should be deceived. If a person knows what the deception is and acts on it, the person practising deception will be guilty of attempt to cheat but not of cheating. The offence will be committed even if the person deceived is other than the one on whom the deception is practised. Similarly, it is not necessary that there should be an intent to deceive any particular individual.

If a false prospectus or balance-sheet is issued to the public, or to a section of the public, the persons issuing it will be guilty of cheating although there was no intent to deceive any one in particular (*R. v. Ross*).

The person to whom the property is delivered may not be *particeps criminis*.

Mere puffing will not amount to this offence (*R. v. Bryan*, the Elkington spoon case).

Leading cases :—*R. v. Abbas Ali*.

R. v. Appasami.

R. v. Soshi Bhusham.

If the deception is in regard to a future event, then there must be evidence of an intention to cheat when the deception was made. Mere failure to carry out a promise is not enough. A man may intend to fulfil his promise, but subsequently he may change his mind.

The following are aggravated forms of cheating :—

1. Cheating with knowledge that wrongful loss may thereby be caused to a person whose interest the offender is bound to protect (s. 418).

2. Cheating by personation (ss. 416, 419).

3. Cheating and thereby dishonestly inducing the person deceived to deliver any property to any person, or to make, alter, or destroy a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security (s. 420).

A person is said to 'cheat by personation' if he cheats

Cheating by personation. (1) by pretending to be some other person, or (2) by knowingly substituting one person for another, or (3) by representing that he or any other person is a person other than he or such other person really is (s. 416).

It is immaterial whether the individual personated is a real or imaginary person (Expln.). [3 years, or fine, or both (s. 417)].

As soon as a man by word, act, or sign, holds himself out as a particular person with the object of passing himself off as that person, and exercising the right which that person has, he has personated him. For instance, if A represents himself to be B at an examination, or represents himself to be of a particular caste which he is not, or gives a false description of his position in life, he commits this offence.

Fraudulent deeds and dispositions. The following provisions relate to fraudulent deeds and dispositions of property :—

1. Dishonest or fraudulent removal or concealment or transfer or property to prevent distribution among creditors (s. 421).

2. Dishonestly or fraudulently preventing from being made available for creditors a debt or demand due to the offender or to any other person (s. 422).

3. Dishonestly or fraudulently signing, executing or becoming a party to any instrument which purports to transfer or charge any property and which contains any false statement as to the consideration for such transfer or charge or as to the person or persons for whose benefit it is intended to operate (s. 423).

4. Dishonestly or fraudulently concealing or removing any property of the offender or of any other person or assisting in the concealment, or removal thereof, or dishonestly releasing any demand or claim to which the offender is entitled (s. 424).

A person commits 'mischief' if he

Mischief.

(1) with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to (a) the public, or (b) any person.

(2) causes (a) the destruction of any property, or (b) any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously (s. 425).

The offender need not intend loss or damage to the owner. The property may belong to the offender, or to him jointly with others (Expln.) [3 months, or fine, or both (s. 426)].

A man may commit mischief on his own property to cause wrongful loss to some person. If a person does any act amounting to mischief in the exercise of a *bona fide* claim of right he cannot be convicted of this offence. An act done through negligence will never amount to mischief. Mischief cannot be committed in respect of *res nullius*, e.g., killing a bull set free.

The aggravated forms of mischief are as follows :—

1. Committing mischief, and thereby causing damage, to the amount of 50 rupees (s. 427).

2. Mischief by killing, poisoning, rendering useless, or maiming any animal of the value of 10 rupees (s. 428).

3. Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox or any other animal of the value of Rs. 50 or upwards (s. 429).

4. Mischief by injury to works of irrigation or by wrongfully diminishing the supply of water for agricultural purposes or for food, or drink, or cleanliness (s. 430).

5. Mischief by injury to public road, bridge, river or channel, so as to render it impassable or less safe for travelling or conveying property (s. 431).

6. Mischief by causing inundation or obstruction to public drainage attended with damage (s. 432).

7. Mischief by destroying, or moving or rendering less useful a light-house or sea-mark or by exhibiting false lights (s. 433).

8. Mischief by destroying, moving, or rendering less useful any land-mark fixed by the authority of a public servant (s. 434).

9. Mischief by fire or explosive substance with intent to cause damage to the amount of Rs. 100 or upwards or where the property is agricultural produce—ten rupees or upwards (s. 435).

10. Mischief by fire or explosive substance with intent to destroy any building used as a place of worship, or human dwelling, or as a place for the custody of property (s. 436).

11. Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden (s. 437).

12. Mischief or attempt to commit mischief with fire or any explosive substance (s. 438).

13. Intentionally running a vessel aground or ashore with intent to commit theft or misappropriation of property (s. 439).

14. Mischief committed after preparation made for causing to any person death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint (s. 440).

A person commits 'criminal trespass' if he

(1) enters into or upon property in the possession of another,

(2) with intent to commit an offence, or

(3) to intimidate, insult, or annoy any person in possession of such property; or

(4) having lawfully entered into or upon such property unlawfully remains there,

(a) with intent to intimidate, insult, or annoy any such person, or

(b) with intent to commit an offence (s. 441) [3 months, Rs. 500, or both (s. 447)].

Trespass can only be committed in respect of immovable corporeal property. The essence of the offence is the intention with which it is committed. A person entering on the land of another in the exercise of a *bona fide* claim of right will not be guilty though the claim is unfounded. But if the entry is made with *intent to annoy* it does not matter whether it was made under a claim of right. The annoyance must be such as would affect an ordinary man, not what would specially and exclusively annoy a particular individual of a queer temperament.

The property must be in the actual possession of a person other than the trespasser. It is *de facto* and not *de jure* possession that is necessary. The person in possession may be an individual or a corporate person.

The entry must be to commit an offence as defined in s. 40, and not any unlawful act. Thus entering an exhibition building without a ticket does not amount to criminal trespass.

House-trespass.

A person commits 'house-trespass' if he

(1) commit criminal trespass

(2) by entering into, or remaining in

(a) any building, tent, or vessel used as a human dwelling or

(b) any building

(i) used as a place of worship, or

(ii) as a place for the custody of property (s. 442).

Introduction of any part of the trespasser's body is sufficient (Expln.). [1 year, or Rs. 1,000, or both (s. 448)].

The following are aggravated forms of this offence :—

1. House-trespass in order to the commission of an offence punishable with death (s. 449).

2. House-trespass in order to the commission of an offence punishable with transportation for life (s. 450).

3. House-trespass in order to the commission of an offence punishable with imprisonment (s. 451).

4. House-trespass after preparation made for causing hurt, as assault, or wrongful restraint to any person, or for putting any person in fear of hurt, assault, or wrongful restraint (s. 452).

'Lurking house-trespass' is house-trespass, after taking precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass (s. 443). [2 years and fine (s. 453)].

Whoever commits lurking house-trespass after sunset and before sunrise is said to commit 'lurking house-trespass' by night (s. 444). [8 years and fine (s. 456)].

House breaking. A person is said to commit 'house-breaking' if he (a) commits house-trespass, and effects his *entrance* into the house, or (b) if being in the house for committing an offence, or after committing an offence, *quits* it in any of the following ways—

(1) Through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

(2) Through any passage not intended by any person other than himself, or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by scaling or climbing over any wall or building.

(3) Through any passage which he, or any abettor of the house-trespass, has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

(4) By opening any lock.

(5) By using criminal force, or committing an assault, or by threatening any person with assault.

(6) By any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself, or by an abettor of the house-trespass (s. 445). [2 years and fine (s. 453)].

House-breaking after sunset and before sunrise is said to be 'house-breaking by night' (s. 446). [3 years and fine (s. 456)].

The following are aggravated forms of the offence of lurking house-trespass and house-breaking :—

1. Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment (s. 454).

2. Lurking house-trespass or house-breaking after preparation made for causing hurt to any person (s. 455).

3. Causing grievous hurt or attempting to cause death or grievous hurt to any person whilst committing lurking house-trespass or house-breaking (s. 459).

The following are aggravated forms of the offence of 'lurking house-trespass by night' and 'house-breaking by night' :—

1. Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment (s. 457).

2. Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person (s. 458).

All persons jointly concerned in lurking house-trespass or house-breaking by night are punishable where death or grievous hurt is caused by one of them (s. 460).

Dishonestly breaking open a receptacle containing property is punishable (s. 461). The punishment is much more severe when such act is committed by a person who is entrusted with its custody (s. 462).

Chapter XVIII deals with offences relating to documents and to trade and property marks.

A person commits forgery if he

Forgery.
Chap. XVIII. (1) makes any false document, or part of a document,

(2) with intent

(a) to cause damage or injury to the public or to any person, or
(b) to support any claim or title, or
(c) to cause any person to part with property, or
(d) to enter into any express or implied contract, or
(e) to commit fraud, or that fraud may be committed (s. 463).
[2 years, or fine or both (s. 465)]. Using as genuine a forged document is punishable likewise (s. 471).

A person is said to make a false document.—

I. If he dishonestly or fraudulently (a) makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execution of a document,

(b) with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed

(i) by, or by the authority of a person by whom, or by whose authority he knows that it was not made, signed, sealed, or executed, or

(ii) at the time at which he knows that it was not made, signed, sealed, or executed. Or

II. If he dishonestly, or fraudulently, without lawful authority by cancellation or otherwise,

(a) alters a document in any material part thereof.

(b) after it has been made or executed either by himself, or by any other person, whether such person be living, or dead at the time of such alteration. Or

III. If he dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person

(a) by reason of unsoundness of mind, or intoxication cannot, or

(b) by reason of deception practised upon him, does not know the contents of the document, or the nature of the alteration (s. 464).

A man's signature of his own name may amount to forgery (Explan. 1). But this must have been done in order that it may be mistaken for the signature of another person of the same name. Making a false document in the name of a fictitious person intending it to be believed that the

document¹ was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by that person in his lifetime may amount to forgery (Explan. 2). A false document made wholly or in part by forgery is designated 'a forged document' (s. 470).

It is not an essential quality of the fraud mentioned in the section that it should result or aim at deprivation of property. The offence is complete as soon as a document is made with intent to commit a fraud. But the false document must appear on its face to be one which, if true, would possess some legal validity or must be legally capable of effecting the fraud intended. A writing, though not legal evidence of the matter expressed, may yet be a document if the parties framing it believed and intended it to be evidence of such matter. It is not necessary that the document should be made in the name of a really existing person.

Counterfeiting a document to support a legal claim will amount to forgery. Antedating a document or inserting a false date in it constitutes forgery.

A general intention to defraud, without the intention of causing wrongful gain or loss to any particular person, is sufficient. There must, however, be a possibility of some person being defrauded. A man may have an intent to defraud and yet there may not be any person who could be defrauded by his act.

If several persons combine to forge an instrument, and each takes a distinct part in it, they are nevertheless all guilty.

It will amount to forgery even though the fabricated document purports to be a copy of another document.

Personation at an examination will amount to forgery as well as cheating.

*Leading cases :—*R. v. Abbas Ali.
R. v. Lalit Mohan.
R. v. Shoshi Bhushan.
R. v. Kotamraju.

A document made to conceal a previous fraudulent or dishonest act amounts to forgery. But such falsification is not forgery if it is only for the purpose of concealing a previous negligent act.

The following are aggravated forms of the offence of forgery :—

1. Forgery of a record of a Court of Justice or of a register of births, baptism, marriage or burial, or a certificate or authority to institute or defend a suit or a power of attorney (s. 464).
2. Forgery of a valuable security or will (s. 467).
3. Forgery for the purpose of cheating (s. 468).
4. Forgery for the purpose of harming the reputation of any person (s. 469).

Other offences relating to documents are :—

1. Making or possessing a counterfeit seal, plate, etc., with intent to commit forgery punishable under s. 467 (s. 472).
2. Same as above when punishable otherwise (s. 473).
3. Possession of a valuable security or will, known to be forged, with intent to use it as genuine (s. 474).

4. Counterfeiting a device or mark used for authenticating any document described in s. 467, or possessing counterfeit marked material (s. 475).

5. Same as above when the documents are other than those described in s. 467 (s. 476).

6. Fraudulent cancellation, destruction, defacement or secretion, etc., of a will, or an authority to adopt, or a valuable security (s. 477.)

7. Falsification of accounts by a clerk or officer or servant with intent to defraud (s. 477A).

A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a 'trade mark,' and in the Penal Code 'trade mark' includes

(1) a trade mark registered under the Trade Marks Act, 1940, and
(2) any mark used in relation to goods for the purpose of indicating a connection in the course of trade between the goods and some person having the right to use the mark (s. 478).

A person uses a false trade mark.

(1) if he (a) marks any goods or any case, package, or other receptacle containing goods, or (b) uses any case, package or other receptacle with any mark thereon.

(2) in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, have a connection in the course of trade with a person with whom they have not any such connection (s. 480). [1 year, or fine, or both (s. 482).]

Property in a trademark is the right to the exclusive use of some mark, name, or symbol, in connection with a particular manufacture. If the same mark is used on a different article it is not an infringement of such right.

A mark used for denoting that movable property belongs to a particular person is called a 'property-mark' (s. 479).

A person uses a false property-mark

(1) if he marks any movable property or goods, or any case, package, or other receptacle containing movable property or goods, or

(2) uses any case, package or other receptacle, having any marks thereon ;

(3) in a manner reasonably calculated to cause it to be believed that the property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong (s. 481). [1 year, or fine, or both (s. 482).]

The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it is impressed ceases to be of that ownership.

Trade-mark denotes the manufacture or quality of the goods to which it is attached, and *property-mark*, the ownership of them.

The following offences relate to counterfeiting any trade or property-mark used by a person :—

1. Counterfeiting any trade-mark or property-mark used by another (s. 483).

2. Counterfeiting a mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that property is of a particular quality or has passed through a particular office or that it is entitled to any exemption (s. 484).

8. Making or possession of any instrument for counterfeiting a trade-mark or property-mark (s. 485).

4. Selling or exposing or possessing for sale or any purpose of trade or manufacture any goods or things with a counterfeit trade-mark or property-mark (s. 486).

5. Making a false mark upon any receptacle containing goods (unless without intent to defraud) (s. 487).

6. Making use of any false mark (unless without intent to defraud) (s. 488).

7. Tampering with property-mark with intent to cause injury (s. 489).

There are five offences relating to currency-notes and bank-notes.—

Currency-notes and bank-notes. 1. Counterfeiting currency-notes or bank-notes (s. 489A).

2. Selling, buying, or using as genuine, forged or counterfeit currency notes or bank-notes knowing the same to be forged or counterfeit (s. 489B).

8. Possession of forged or counterfeit currency-notes or bank-notes, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine (s. 489C).

4. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes (s. 489D).

5. Making or using documents resembling currency-notes or bank-notes (s. 489E).

Chapter XIX treats of criminal breach of contracts of service. Section

Contracts of service. Chap. XIX. 490 which dealt with a breach of contract of service during voyage or journey and s. 492 with breach of

contract to serve at a place where a servant is conveyed at his master's expense, are repealed by Act III of 1925.

The only case in which the Code now punishes a breach of contract is the following :—

Voluntarily omitting to perform a lawful contract to attend on or supply the wants of a child, or an insane or a sick person, who is incapable of providing for his own safety or of supplying his own wants (s. 491). [8 months, or Rs. 200, or both.]

Ordinary servants, such as cooks, do not come within the purview of this section.

Chapter XX deals with offences relating to marriage.

Marriage Chap. XX The following two provisions relate to mock or invalid marriages :—

1. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage (s. 493). [10 years and fine].

2. Dishonestly or fraudulently going through a marriage ceremony knowing that no lawful marriage is thereby created (s. 496). [7 years and fine].

The latter offence differs from the former in the fact that in it the ceremony is gone through, which is valid on the face of it but invalid for some reason known to one party, or the other. The former section applies to deception practised by a man on a woman; the latter applies to an offence by a man as well as by a woman.

A person commits 'bigamy' if that person.

Bigamy. (1) having a husband or wife living,
(2) marries in any case in which such marriage is void.

(3) by reason of its taking place during the life of such husband or wife (s. 494). [7 years and fine]. If the former marriage is concealed from the person with whom the subsequent marriage is contracted, the punishment is ten years and fine (s. 495).

There are two exceptions in which the second marriage is not an offence—

(1) When the first marriage has been declared void by a Court of competent jurisdiction.

(2) When the husband or wife has been continually absent or not heard of for seven years, provided that the facts be disclosed to the person with whom the second marriage is contracted.

This section only applies to Hindu and Mahomedan women but not men, and to Christian and Parsis of either sex.

The first marriage must be a valid marriage. But a Mahomedan girl has the option, if Shia, to ratify, or if Sunni, to cancel, her marriage on reaching the age of puberty if a person other than her father or grandfather has given her in marriage.

Conversion of a Hindu wife to Mahomedanism or Christianity does not dissolve her marriage with her Hindu husband and if she marries a Mahomedan or a Christian she commits bigamy. But if a Hindu Christian convert having a Christian wife relapses into Hinduism and marries a Hindu woman, he cannot be convicted of bigamy because the Hindu law recognizes polygamy on the part of the husband. But even if he is regarded as a Christian, his second marriage according to Hindu rites is no marriage at all.

Leading cases :—*R. v. Ram Kumari.*

R. v. Ganga.

R. v. Millard.

It appears, however, that a Christian cannot by embracing Mahomedanism marry a second time during the lifetime of his first wife. He cannot cast off to the winds a contractual obligation by his own act.

The rigour of the second exception is somewhat modified in *Tolson's* case, which lays down that if the second marriage takes place *within*

seven years under a *bona fide* belief based on reasonable grounds that the former consort is dead, no offence is committed.

A person commits adultery, if he

- Adultery. (1) has sexual intercourse with a person,
(2) whom he knows or has reason to believe to be the wife of another man,

(3) without the consent or connivance of that man,

(4) such sexual intercourse not amounting to the offence of rape (s. 497). [5 years, or fine, or both].

The inconstancies of a man are made punishable by this section, but not the inconstancies of a wife. The wife is not punishable as an abettor.

Taking or enticing away or concealing or detaining a woman, knowing or having reason to believe her to be married, from her husband, in order that she may have illicit intercourse with any man is punishable (s. 498). [2 years, or fine, or both].

A person is guilty of 'defamation' if he,

Defamation. (1) by words, either (a) spoken, or (b) intended
Chap. XXI. to be read, or

(2) by signs or visible representations,

(3) makes or publishes any imputation concerning any person,

(4) intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person (s. 499). [2 years simple, or fine, or both (s. 500)].

Defamation may be of a deceased person (Expln. 1.) It may be concerning a company, an association, or collection of persons (Expln. 2). It may be by ironical expressions.

An imputation harms a person's reputation which, in the estimation of others, directly or indirectly, either

(1) lowers his moral or intellectual character ; or

(2) lowers his character in respect of his caste or calling, or his credit ; or

(3) causes it to be believed that his body is in a loathsome state, or in a state generally considered disgraceful (Expln. 4).

The English doctrine that libel is an offence because it tends to a breach of the peace is not adopted in the Code. The definition in the Code applies to words as well as writings.

Spoken words, even if defamatory, do not amount to a crime under the English law, except when they are seditious, blasphemous, grossly immoral or obscene. The Penal Code makes no distinction between spoken and written defamation. Nor does it recognize the distinctions of English law whereby, under certain circumstances, words might be libellous if written, but are not slanderous if spoken.

The defamatory matter must be published, i.e. communicated to a person other than the one defamed. According to the English law, if such matter is communicated to the person defamed, it will be sufficient for an indictment, if it is likely to provoke a breach of the peace. The person who makes the imputation intending to harm the reputation of

another, as well as the person who *publishes* it are alike guilty. The publisher need not be the maker of the defamatory matter.

The publisher of a newspaper is responsible for defamatory matter appearing in the newspaper whether he knows it or not. But it will be a good justification to plead if such matter is published in his absence and without his knowledge and the temporary management of the paper was in competent hands. A newspaper published at one place and sent to a subscriber at another will be considered to have been published at the latter place.

Exceptions.

Any of the following defences may be set up against a charge of defamation :—

1. Imputation of any truth which the public good requires to be made or published.
2. Opinion expressed in good faith respecting the conduct of a public servant in the discharge of his duties, or his character so far as it appears in that conduct.
3. Opinion expressed in good faith respecting the conduct of any person touching a public question, or his character so far as it appears in that conduct.
4. Publication of a substantially true report of the proceedings of a Court.

Such report cannot be published if the Court has prohibited it, or where the subject-matter of the trial is obscene or blasphemous.

5. Opinion expressed in good faith respecting the merits of a case decided in a Court; or the conduct of a party, witness or agent concerned therein; or the character of such person so far as it appears in such conduct.

6. Opinion expressed in good faith respecting the merits of a performance submitted by the author to public judgment; or respecting the author's character so far as it appears in such a performance.

7. Censure passed in good faith by a person having lawful authority over another.

8. Accusation preferred in good faith to a duly authorized person.

9. Imputation made in good faith by a person for the protection of his interest, or of any other person, or for the public good.

The privilege of judges, counsel, pleaders, witnesses, and parties comes under this exception. So also, statements made in pleadings and reports to superior officers.

JUDGE.—A judge cannot be prosecuted for defamation for words used by him whilst trying a case in Court, even though such words are alleged to be false, malicious, and without reasonable cause (*Rama v. Swaramanya*).

COUNSEL OR PLEADER.—The Madras High Court held in *Sullivan v. Norton* that no proceedings can be instituted against a counsel or pleader for uttering words that are defamatory, or are calculated to hurt the feelings of others, or are absolutely devoid of all solid foundation. This case has been doubted in a much later decision in which it is held that in the case of a lawyer good faith is to be presumed until bad faith is

proved by proof of private malice when the Court will interfere (*Mir Anwaruddin v. Fathim Bai*).

The Bombay High Court has held that so long as an advocate acts on his instructions he has the fullest liberty of speech (*Bhaishankar v. Wadia*). Where express malice is absent the advocate or pleader is protected (*In re Nagari*; *Purshottamdas*).

The Calcutta High Court has held that advocates have no absolute privilege. But unless a counsel or pleader is actuated by improper motives he is protected. If bad faith is proved in putting questions to witnesses he is liable. There must be evidence that he was actuated by improper motives and not by a desire to further his client's interest.

The Patna High Court has held that the privilege is not absolute but qualified and the burden is on the prosecution to prove absence of good faith.

The Rangoon High Court has held that the English law of absolute privilege does not apply to advocates.

WITNESS.—The Bombay High Court has held in a full bench case that relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of this section (*Bai Shanta v. Umrao*).

The Calcutta High Court has laid down that such statements should be relevant to the inquiry (*Woolfun Bibi v. Jerasat Sheikh*). If a witness voluntarily makes defamatory statements he will be guilty (*Haider Ali v. Abru Mia*).

The Madras High Court is of opinion that statements of a witness made in the witness box are absolutely privileged. If they are false the remedy is by indictment for perjury, and not for defamation (*Manjaya v. Shesha Shetti*).

The Allahabad High Court has held in a full bench case that a witness can be prosecuted for defamatory statements concerning a person unless he shows that the statements fall under one of the exceptions to this section (*Ganga Prasad*).

The former Chief Court of the Punjab had adopted the view of the Calcutta and Allahabad High Courts.

The Nagpur High Court has followed the Bombay, Calcutta and Allahabad High Courts and held that a witness is not entitled to absolute privilege. (*Chotelal's case*).

PARTY.—The Bombay High Court has held that relevant statements made by an accused are not absolutely protected, but are governed by the provisions of s. 499 (*Bai Shanta v. Umrao*).

The Madras High Court has held that if an accused puts any question while defending himself, the question cannot be made the subject of a prosecution for defamation (*Hayes v. Christian*). Statement in answer to a question by the Court is not absolutely privileged (*Tiruvengada Mudali's case*). If a defamatory statement is made before an officer who is neither a judicial officer nor a Court, e.g., a Registration Officer, such a statement is not absolutely privileged. (*Krishnamal's case*).

The Calcutta High Court has ruled in a full bench case that a defamatory statement on oath by a party falls within s. 499 and is not absolutely privileged (*Satis Chandr Chakravarti v. Ram Doyal De*).

The Allahabad High Court holds the view that a suitor is not absolutely privileged.

The Rangoon High Court has held that a party who gives evidence on his own behalf in a judicial proceeding may be prosecuted for any defamatory statement made in the course of his evidence.

PLEADINGS.—Defamatory statements in applications, pleadings and affidavits are not absolutely privileged.

The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged. According to the Allahabad High Court any statement made in an application in good faith is protected.

The Calcutta and Patna High Courts have held that defamatory statements in a plaint or an affidavit are not absolutely privileged. But the decisions of the Calcutta High Court are not unanimous on the point whether statements in a complaint to a Magistrate are absolutely privileged or not.

The Madras High Court has in a full bench case held that a defamatory statement in a complaint to a Magistrate is not absolutely privileged. (*Tiruvengada Mudali's case*).

The former Chief Court of the Punjab laid down that such statements were not absolutely privileged.

The Rangoon High Court has taken the same view as the other High Courts.

10. Caution intended in good faith for the good of the person to whom it is conveyed or of some person in whom he is interested, or for public good.

Other offences.

The following acts also are made punishable :—

1. Printing or engraving matter known to be defamatory (s. 501).
2. Sale of printed or engraved substance containing defamatory matter (s. 502).

A person commits 'criminal intimidation' if he

- (1) threatens another with any injury
- (a) to his person, reputation or property, or
- (b) to the person, or reputation of any one in
- whom that person is interested.

(2) with intent

- (a) to cause alarm to that person, or
- (b) to cause that person to do any act which he is not legally bound to do, or omit to do any act which that person is legally entitled to do,

(3) as the means of avoiding the execution of such threat (s. 503).
[2 years, or fine, or both].

If the threat be to cause (1) death or grievous hurt, (2) the destruction of any property by fire, (3) an offence punishable with death, transporta-

tion, or 7 years' imprisonment, then 7 years, or fine, or both (s. 506). [If intimidation is caused by an anonymous communication, then *additional* imprisonment for 2 years (s. 507)].

'Criminal intimidation' is closely analogous to 'extortion.' In the former the immediate purpose is to induce the person threatened to do, or abstain from, something which he was not legally bound to do or omit; in the latter, the purpose is filthy lucre by obtaining property. In 'criminal intimidation' the threat need not produce the effect aimed at, nor should it be addressed directly to the person intended to be influenced. If it reaches his ears anyhow the offence is complete.

The following two provisions relate to insult offered to persons other than public servants—

Insult.

1. Intentional insult with intent to provoke a breach of the peace, or to cause the commission of any offence (s. 504).

(2) Uttering any word, or making any sound or gesture, or exhibiting any object, intending to insult the modesty of a woman or intruding upon the privacy of a woman (s. 509).

Statements conducing to mischief.

Making, publishing or circulating, any statement, rumour, or report

(1) with intent to cause any officer, soldier, sailor or airman in the Army, Navy or Air Force, to mutiny, or to disregard or fail in his duty, or

(2) with intent to cause fear or alarm to the public whereby any person may be induced to commit an offence against the State or public tranquility, or

(3) with intent to incite any class of persons to commit any offence against any other class is made punishable (s. 505). [2 years, or fine, or both]. The offence is not committed if such statement, etc., is *true* and there is no such intent as aforesaid.

Act or omission caused by inducing a person to believe that he will be rendered an object of Divine displeasure if he does not do or omit to do the things which it is the object of the offender to cause him to do or omit, is punishable (s. 508). [1 year, or fine, or both].

Intoxication.

Intoxication alone is not made punishable by the Code. But a person who in a state of intoxication appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person is liable to punishment (s. 510). [24 hours, or Rs. 10, or both.]

The last Chapter deals with attempts to commit offences. Attempting to commit or causing to be committed an offence, punishable by the Code with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence is—where there is no express provi-

sion for the punishment of such attempt—punishable with transportation or imprisonment up to half the term provided for the offence itself, or the fine provided or both (s. 511).

Every commission of a crime has three stages—

- (1) intention to commit it ;
- (2) preparation for its commission ; and
- (3) a successful attempt.

Mere *intention* to commit a crime, not followed by any act, does not constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it or towards maturing and effecting it.

Preparation consists in devising means for the commission of an offence. The section does not punish acts done in the mere stage of preparation. Mere preparation is punishable only when the preparation is to wage war against the King-Emperor (s. 122), or to commit dacoity (s. 399).

Attempt is the direct movement towards the commission after the preparations are made. To constitute the offence of attempt there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. An attempt can only be manifested by acts which would end in the consummation of the offence, but for intervention of circumstances independent of the will of the party. An attempt is possible even when the offence attempted cannot be committed ; as when a person intending to pick another's pocket thrusts his hand into the pocket but finds it empty.

If the *attempt* to commit a crime is successful, then the crime itself is committed ; but where the attempt is not followed by the intended consequences s. 511 applies.

Leading cases :—R. v. Ramsarun.

R. v. MacCrea.

R. v. Mangesh.

R. v. Peterson.

R. v. Baku.

APPENDIX.

Questions selected from papers set at law examinations.

CHAPTER I.

1. Under what circumstances may an offence committed outside British India be tried as an offence committed in British India? See ss. 3 and 4.
2. Describe the jurisdiction of the Indian High Courts in cases of offences committed outside British India (*a*) on land, and (*b*) on the high seas. See Comment on s. 4.
3. What is extradition and what are the conditions for granting it? See Comment on ss. 3 and 4.

CHAPTER II.

4. Define—Person (s. 11), Public (s. 12), Servant of the Queen (s. 14), Judge (s. 19), Court of Justice (s. 20), Public servant (s. 21), Movable property (s. 22), Wrongful gain and wrongful loss (s. 23), Dishonestly (s. 24), Fraudulently (s. 25), Counterfeit (s. 28), Document (s. 29), Valuable security (s. 30), Act and Omission (s. 33), Voluntarily (s. 39), Offence (s. 40), Special law (s. 41), Local law (s. 42), Illegal and “Legally bound to do” (s. 43), Injury (s. 44), Vessel (s. 48), Good faith (s. 52).
5. What is the law in the Penal Code as to illegal omissions? See s. 32.
6. What is the law regarding joint offenders? See ss. 34, 35, 38.
7. If two persons commit the same act, can they be guilty of different offences in respect of that act? See s. 38.

CHAPTER III.

8. By whom, and for what, may a sentence of death and of transportation for life be commuted under the Penal Code? See ss. 54 and 55.
9. What is the distinction made in the kind of punishment to which an American or European must be sentenced when the offence of which he is convicted is punishable with transportation? See s. 56.
10. What sentences of transportation can be passed under the provisions of the Code? See ss. 59, 121A, 124A, and 511.
11. In what cases may transportation be awarded instead of imprisonment? See s. 59.
12. Is there any limit to fine where no sum is expressed to which such fine may extend? See s. 63.
13. What are the provisions of the Penal Code with regard to character and duration of the sentence of imprisonment in default of payment of fine? See ss. 64, 66, 69, 70.
14. State fully the law of cumulative penalties as stated in the Penal Code and illustrate it by cases. See s. 71 and Comment thereon.
15. What rules are laid down for assessing punishment for offences
 - (a) Committed in one transaction.
 - (b) Falling within two definitions of the Code.
 - (c) Made up of acts which are offences themselves?
16. What is the law regarding solitary confinement? See ss. 73, 74.
17. Does s. 75 authorize a Magistrate to pass an enhanced sentence? See s. 75.

CHAPTER IV.

18. Under what circumstances is a man justified in committing acts which would otherwise be offences? *See p. 50, General Exceptions.

19. When is the belief of legal justification a good defence? See ss. 76, 77, 78 and 79.

20. To what extent may ignorance or mistake of an essential fact be pleaded as a defence to a criminal charge? See ss. 76 and 79.

21. What do you mean by an act of State? Can an act originally wrongful become an act of State by subsequent ratification? See Comment on s. 79.

22. To what extent, if at all, and subject to what limitations, if any, will a mistake of fact afford a valid defence? See s. 79.

23. When is an act excusable on the ground of its being done by accident or misfortune? See s. 80.

24. Quote the section which authorizes a choice of evils. See s. 81.

25. In what cases is *mens rea* not an essential ingredient in an offence? See p. 55.

26. Up to what age is a child supposed to be *doli incapax*? From what age does his criminal liability begin? Discuss briefly the Indian law on the subject, pointing out the difference, if any, in the law of England. See Comment on s. 82.

27. Where does the Code follow the maxim *malitia supplet aetatem* (malice supplies defect of years)? See s. 83.

28. State the law with regard to offences committed in a state of intoxication. See ss. 85 and 86.

29. How far does consent of the person to whom, and upon whom, an act is done, take away the act from the category of offences, if without such consent it would be an offence? See ss. 87, 88, 89 and 91.

30. On what principle does law give protection to a medical man who causes death by a dangerous operation? See Comment on s. 88.

31. Mention some cases in which, even without the consent of the party affected, an act would not be an offence if done in good faith. See s. 92.

32. When is a consent invalid? See s. 90.

33. If it is shown that a communication made to a person has caused harm to such person, what is a good defence? See s. 93.

34. In what cases will a plea of compulsion or necessity be a sufficient defence against a charge of criminal offence? See s. 94 and Comment thereon.

35. How far do threats prevent acts done by the person threatened from being an offence? *See s. 94.

36. Explain with reference to any of the provisions of the Penal Code the maxim *de minimis non curat lex*. See s. 95.

37. State concisely the law regarding the right of private defence as laid down in the Penal Code. See ss. 96, 97 and 98.

38. What are the acts against which there is no right of private defence? See s. 99.

39. Are there any limitations to the right of self-defence? See s. 99.

40. Under what circumstances does the right of private defence of the body extend to causing death? See ss. 100 and 101.

41. "He who preserveth his own life at the expense of another man's is excusable through unavoidable necessity." Examine the correctness of this statement explaining how far it is true at the present time. See s. 100.

42. Under what circumstances does the right of private defence of property extend to causing death? See s. 103.

43. When does the right of private defence of property commence and how long does it continue? See s. 105.

CHAPTER V.

44. What is abetment? Give a brief account of the provisions of the Penal Code relating to the abetment of offences. See ss. 107 and 108.

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